

***United States Court of Appeals
for the Second Circuit***



APPENDIX

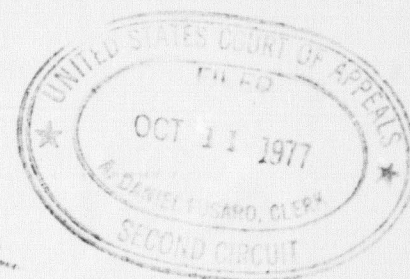
77-1280

To be argued by
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
JUAN RAMON VASQUEZ, a/k/a "Ramon
Ramos," and JOHN NARVAEZ,
Defendants-Appellants.
-----x

Bp/s
Docket No. 77-1280



APPENDIX TO THE BRIEF
FOR APPELLANT NARVAEZ

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN ERDMANN, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
JOHN NARVAEZ
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

DAVID J. GOTTLIEB,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

U.S. MARVAEZ, JOHN
Case Filed Mo. Day 02 18
77 0133 08
U.S. MAG. CASE NO. 77-159

OFFENSES CHARGED
21:846 Consp. to violate Federal Narcotics Laws
21:846 Consp. to violate Federal Narcotics Laws

U.S. MAG. CASE NO. 77-159
Disposition of Charges
4-19-77

II. KEY DATES & INTERVALS
ARREST or U.S. Custody Began 2/8/77
INDICTMENT 2-18-77
ARRAIGNMENT 2-24-77
TRIAL 4-19-77

SENTENCE
Disposition of Charges
4-19-77

MAGISTRATE
DATE 2/9/77
INITIAL/NO. KS-08AK
OFFENSE (In Complaint) 21 USC 846, 812841(a)(1) and 841(B)(1)(a) - NARCOTICS

U.S. Attorney or Asst.
Martin B. McNamara
791-1934

ATTORNEYS Defense: CJA Ret. Waived Self. None / Other PD. CD

Colon-05, Urbina-06, Agosto-07
J. Vasquez-01, Reyes-02, A. Vasquez-03, Lugo-04
DATE (DOCUMENT NO.) PROCEEDINGS
2/9/77 Complaint filed, represented by Mr. Weissberg. Defendant remanded into the custody of U.S. Marshal in lieu of \$25,000 cash/surety.
2/18/77 Indictment filed, 77 Cr.133.....Tenney, J.
2-24-77 Deft. (atty. Jack Lipson for arraignment purposes only) pleads not guilty. Deft. continued remanded in lieu of bail fixed at \$25,000. Case assigned to Pierce, J. for all purposes.
3/7/77 Filed Financial Affdv.t CJA 23 & Order appointing the Federal Defender Service Unit by Judge Frankel - Part I.
3/2/77 Conference held Dft. Navarez present with atty Jack Lipson. Trial set for April 5, 1977 @ 9:30. Dft. Lugo bail is fixed at \$25,000 cash or surety.
3-22-77 Filed Superseding Indictment & referred to Pierce, J.... Metzner, J.

IV. PROCEEDINGS (CONTINUED)

PAGE TWO

V. EXCLUDABLE DELAY

DATE	PROCEEDINGS (CONTINUED)	EXCLUDABLE DELAY
3-15-77	Conference held - all dfts. present except dft. Lugo. Dfts. Colon, Astorga & Caccapcion are arraigned. All (3) Dfts. plead not guilty as charged. Bail as to dfts. Caccapcion & Astorga XXXX fixed at \$25,000 cash or surety. Both Dfts. remanded in lieu of bail. As to dft. Colon bail is fixed at \$10,000 PRB Sec. by 10% cash Bail limits - Southern District of N.Y. only & dft. is to report weekly to her aty. David Zapp who will then notify AUSA. Trial begins April 5, 1976/ as previously scheduled.Pierce J.	
3-30-77	Filed Dfts. John Narvaez Request to Charge.	
3-31-77	Dft. John Narvaez (Atty Jack Lipson) Pleads not guilty. Dft. KKKK cont'd remanded in lieu of bail fixed at \$25,000.C/S. Entire case referred to Pierce J. as being related to & superceding 77 Cr. 133 LWP. All bails previously fixed in superceded indictment are to apply to this indictment....Metzner J.	
4-1-77	Filed Govts. Bill of Particulars.	
4-5-77	Filed Dfts. Memorandum of Law.	
4-6-77	Jury trial begins as to dfts. Juan Vasquez, Colon & Narvaez on counts as charged.	
4-7-77	Trial Cont'd	
4-11-77	" "	
4-12-77	" "	
4-13-77	" "	
4-14-77	" "	
4-14-77	Filed Order that Accordingly, the objections are sustained & the testimony in question is stricken from the record....Pierce J. (mm)	
4-19-77	Filed Govts. Memorandum of Law.	
4-19-77	Filed Govts. Supplemental Request to Charge 3A.	
4-19-77	Filed Govts. Supplemental Request to Charge 1A & 2A.	
4-19-77	Filed Govts. Supplemental Request for the Voir Dire.	
4-18-77	Trial Cont'd - Court charges jury.	
4-19-77	Deliberations cont'd - Jury finds dft. Narvaez guilty on count 1 as charged. Sentence June 1, 1977 @ 4:30. Dft. Cont'd Remanded in lieu of bail as previously fixed at \$25,000 cash or surety.....Pierce J.	

5-13-77 Filed transcript of record of proceedings, dated 4-7, 11, 12, 13-77

5-13-77 Filed transcript of record of proceedings, dated 4-14, 18, 19-77

CONTINUED

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FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

JOHN MARVAEZ

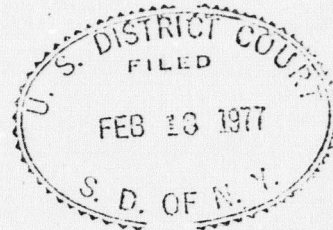
77
Yr.

133
Docket No.

08
Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
6-1-77	Filed Judgment & Commitment (Atty. Jack Lipson, Fed. Defender Pres.) The Dft. is hereby committed to the custody of the atty. gen. or his authorized representative for imprisonment for a period of ONE (1) YEAR and ONE (1) DAY on count 1. Pur. to T.21 U.S.C. Sec. 841, dft. is placed on special parole for a term of THREE (3) YEARS to commence upon expiration of sentence. Dft. is to receive credit for time served in Federal Custody.Pierce J. Issued Commitment 6-6-77				
6-6-77	Dft. is Remanded. Dft. on the superceded indictment 77Cr.133 is dismissed. Dft. has 10 days to file notice of appeal....Pierce J.				
6-6-77	Filed Dfts/ Notice of Appeal from Judgment dtd. 6-1-77. (mailed notice)				
6-9-77	Filed True Copy of J&C with marshals ret. dft. delivered to warden, MCC, NY on 6-1-77				
6-30-77	Filed certification and transmittal of supplemental record to USCA.				
8-31-77	Filed transcript of record of proceedings dated 6-1-77				

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

-v-

JUAN RAMON VASQUEZ,
a/k/a "Ramon Ramos",
LUIS ANGEL REYES,
AUREA VASQUEZ
a/k/a "Gloria Montalvo",
PEDRO LUGO,
ENRIQUETA COLON,
a/k/a "Catina",
GABRIEL URBINA-ASTORGA,
JOSE A. AGOSTO-CONCEPCION,
a/k/a "Indio" and
JOHN NARVAEZ,

Defendants.

INDICTMENT

77 Cr.

77 CRIM. 0133

The Grand Jury charges:

1. From on or about the 28th day of January, 1977 and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos", LUIS ANGEL REYES, AUREA VASQUEZ, a/k/a "Gloria Montalvo", PEDRO LUGO, ENRIQUETA COLON, a/k/a "Catina", GABRIEL URBINA-ASTORGA, JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", and JOHN NARVAEZ the defendants and others to the Grand Jury known and unknown, unlawfully intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I

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narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about January 28, 1977 JUAN R. VASQUEZ, a/k/a "Ramon Ramos", the defendant, had a conversation with two individuals at Apartment 13, 713 East 9th Street, New York, New York concerning the sale of 200 ounces of heroin.
2. On or about January 31, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and PEDRO LUGO, the defendants, had a conversation at Apartment 13, 713 East 9th Street, New York, New York concerning the price and availability of kilograms of heroin in Chicago.
3. On or about February 1, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos", AUREA VASQUEZ, a/k/a "Gloria Montalvo", and PEDRO LUGO, the defendants had a conversation at Francesco's Italian Ristorante, 1690 York Avenue, New York, New York, concerning the purchase of 4 or 5 kilograms of heroin.
4. On or about February 2, 1977, JOHN NARVAEZ and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, had telephone conversations.
5. On or about February 4, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, held a meeting at 713 East 9th Street, New York, New York.

l:kco

6. On or about February 5, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, traveled by airplane from New York to Chicago and met with ENRIQUETA COLON, a/k/a "Catina", the defendant at 31-28 West Cortland Street, Chicago, Illinois.

7. On or about February 6, 1977, AUREA VASQUEZ, a/k/a "Gloria Montalvo", ENRIQUETA COLON, a/k/a "Catina" and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, had a conversation at 31-28 West Cortland Street, Chicago, Illinois.

8. On or about February 6, 1977, AUREA VASQUEZ, a/k/a "Gloria Montalvo", and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, examined \$110,000 in cash in the vicinity of Kelsey and Cortland Streets, Chicago, Illinois.

9. On or about February 8, 1977, ENRIQUETA COLON, a/k/a "Catina", and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, delivered a sample of approximately 25.4 grams of heroin to another at 31-28 West Cortland Street, Chicago, Illinois.

10. On or about February 8, 1977, GABRIEL URBINA-ASTORGA, the defendant, traveled from Chicago to Aurora, Illinois.

11. On or about February 8, 1977, in Chicago, Illinois GABRIEL URBINA-ASTORGA, the defendant drove a car which had approximately 3, 122.8 grams of heroin in its trunk.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 3rd day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit approximately 34.44 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 7th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance to wit, approximately 173.10 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 12th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 48.77 grams of heroin.

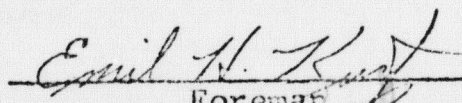
(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

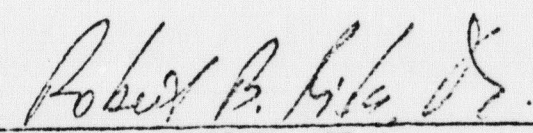
COUNT FIVE

The Grand Jury further charges:

On or about the 26th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 7.63 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)


Foreman


ROBERT B. FISKE, JR.
United States Attorney

77 CRIM. 0133

Form No. USA-33a-274 (Ed. 9-25-59)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JUAN RAMON VASQUEZ, a/k/a "Ramon
Ramos", LUIS ANGEL REYES, AUREA
VASQUEZ, a/k/a "Gloria Montalvo",
PEDRO LUGO, ENRIQUETA COLON,
a/k/a "Catina", GABRIEL URBINA-
ASTORGA, JOSE A. AGOSTO-CONCEPCION,
a/k/a "Indio" and JOHN NARVAEZ,

Defendants.

INDICTMENT

(21, U.S.C. 846, 812, 841(a)(1),
841(b)(1)(A))

ROBERT B. FISKE, JR.

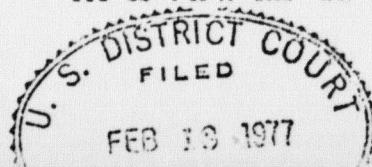
United States Attorney

A TRUE BILL

Emil H. Burt

Foreman

FPI-SS-1-13-70-20M-4925



JUDGE PIERCE

February 18, 1977 - Filed Indictment.

Search warrants ordered for defendants:
Enriqueta Colon, Gabriel Urbina-
Astorga, Jose A. Agosto-Concepcion
Imney.

February 24, 1977 - Dept. Juan Ramon Vasquez
(att. Paul Lieber for Washington purposes only)
pleads not guilty. Dept. continued (remanded)
in lieu of bail fixed at \$50,000.

Dept. Luis Angel Reyes (att. Edward Panzer)
pleads not guilty. Dept. continued (remanded)
in lieu of bail fixed at \$75,000.

Dept. Aurea Vasquez (att. Paul Lieber)
pleads not guilty. Bail fixed at \$50,000.
PRB co-signed by Maria Rodriguez and
Anna Rodriguez and lead to store.
Dept. continued (remanded) in lieu of bail.

only - money of 1 year, not present. Court directs a not guilty plea be entered. Deft. continued remanded in lieu of bail fixed at \$50,000.

Deft. Enrique Colon (no appearance by defendant). Bench warrant ordered. Court directs a not guilty plea be entered.

Deft. Gabriel Urbina - Astorga (no appearance by defendant). Bench warrant ordered. Court directs a not guilty plea be entered.

Deft. Jose A. Agosto - Concepcion (no appearance by deft.) Bench warrant ordered. Court directs a not guilty plea be entered.

Deft. John Harvaz (att. Jack Ly for arraignment purposes only) Pleads not guilty. Deft. continued remanded in lieu of bail fixed at \$25,000. Case assigned to Pierce for all purposes. Frankel.

March 2, 1977 - Conference held - Deft Juan Vasquez present - his atty Sidney Harbo not present - Deft Reyes present - with atty E. Deft Anna Vasquez present with atty Paul Lieber; Deft Luis present w/ atty Jack Lyson. Trial April 5, 1977 at 9:30. Bail hearing held. Deft. Lugo present w/ atty Thomas. Trial set for April 5, 1977 at 9:30. Bail hearing follows. Deft Juan Vasquez - bail remains at \$50,000. Deft. deft. Reyes - bail fixed at \$25,000 cash or surety. Deft. deft. Harvaz - bail remains at \$25,000 cash or surety. Deft. deft. Lugo - bail fixed at \$25,000 cash or surety.

March 15, 1977 - Conference held - all depts' present except
James Vazquez. all depts' represented by counsel except
dept Lugo. ~~all depts'~~ Depts' Colon, Astorga + Concepcion
are arraigned. All (3) depts' plead not guilty as
charged. Bail as to depts' Concepcion + Astorga
fixed at \$ 25,000 cash or surety. Both
~~As to dept Colon~~
depts' Remanded in lieu of bail. As to dept Colon
bail is fixed at \$ 10,000 PRB acc. by 107th Cash
Bail limit - Southern Dist of N.Y. only and dept has to report
weekly to her atty David Zapp who will then notify AUSA.
Trial begins April 5, 1977 as previously scheduled.

Price J

~~April 5, 1977 - Dept Concepcion present w/ atty H. de la Cruz~~
~~Sollister present is arraigned on Dept memo superceding~~
~~indictment. Dept pleads guilty on counts 1 & 2 re interpreter~~
~~Francis Geron. PSI ordered Sentence May 4, 1977~~
~~at 4 PM. Dept is dismissed on the superceded Ind 77C~~
~~Bail of \$ 25,000 cash or surety cont'd.~~
~~Dept Lugo~~

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JUAN RAMON VASQUEZ,
a/k/a "Ramon Ramos",
LUIS ANGEL REYES,
AUREA VASQUEZ
a/k/a "Gloria Montalvo",
PEDRO LUGO,
ENRIQUETA COLON,
a/k/a "Catina",
GABRIEL URBINA-ASTORGA,
JOSE A. AGOSTO-CONCEPCION,
a/k/a "Indio" and
JOHN NARVAEZ,

Defendants.

INDICTMENT
S 77 CP. 133 (LMP)

The Grand Jury charges:

1. From on or about the 1st day of October, 1976 and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos", LUIS ANGEL REYES, AUREA VASQUEZ, a/k/a "Gloria Montalvo", PEDRO LUGO, ENRIQUETA COLON, a/k/a "Catina", GABRIEL URBINA-ASTORGA, JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", and JOHN NARVAEZ the defendants and others to the Grand Jury known and unknown, unlawfully intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I

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narcotic drug; controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about January 3, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, went to the River Bend East Bar, 133 Avenue D, New York, New York.
2. On or about January 3, 1977, LUIS ANGEL REYES, the defendant, delivered approximately 34.44 grams of heroin to another at the River Bend East Bar, 133 Avenue D, New York, New York.
3. On or about January 6, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, had a conversation at Feathers Restaurant, 24 Fifth Avenue, New York, New York, concerning the receipt of two and one half kilograms of heroin from Chicago.
4. On or about January 7, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES the defendants, had a conversation at Feathers Restaurant, 24 Fifth Avenue, New York, New York concerning the price of heroin in Chicago.
5. On or about January 7, 1977, LUIS ANGEL REYES, the defendant, delivered approximately 173.10 grams of heroin to another at Feathers Restaurant, 24 Fifth Avenue, New York, New York.

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6. On or about January 11, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, had a conversation at Apartment 13, 713 East 9th Street, New York, New York, concerning the price and availability of heroin in Chicago.

7. On or about January 12, 1977, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, held a meeting at Apartment 13, 713 East 9th Street, New York, New York.

8. On or about January 12, 1977, LUIS ANGEL REYES, the defendant, delivered approximately 48.77 grams of heroin to another at Apartment 13, 713 East 9th Street, New York, New York.

9. On or about January 26, 1977, JUAN RAMON VASQUEZ a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, held a meeting at Apartment 13, 713 East 9th Street, New York, New York.

10. On or about January 26, 1977, LUIS ANGEL REYES, the defendant, delivered approximately 457.63 grams of heroin to another at Apartment 13, 713 East 9th Street, New York, New York.

11. On or about January 28, 1977, JUAN R. VASQUEZ, a/k/a "Ramon Ramos", the defendant, had a conversation with two individuals at Apartment 13, 713 East 9th Street, New York, New York concerning the price and availability of 200 ounces of heroin in Chicago.

12. On or about January 31, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and PEDRO LUGO, the defendants, had a conversation at Apartment 13, 713 east 9th Street, New York, New York concerning the price and availability of kilograms of heroin in Chicago.

13. On or about February 1, 1977, JUAN VASQUEZ a/k/a "Ramon Ramos", AUREA VASQUEZ, a/k/a "Gloria Montalvo", and PEDRO LUGO, the defendants, had a conversation at Francesco's Italian Ristorante, 1690 York Avenue, New York, New York, concerning the sale of 4 or 5 kilograms of heroin.

14. On or about February 2, 1977, JOHN HARVAEZ and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, had telephone conversations.

15. On or about February 4, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, held a meeting at 713 East 9th Street, New York, New York.

16. On or about February 5, 1977, JUAN VASQUEZ, a/k/a "Ramon Ramos" and AUREA VASQUEZ, a/k/a "Gloria Montalvo", the defendants, traveled by airplane from New York to Chicago and met with ENRIQUETA COLON, a/k/a "Catina", the defendant, at 31-28 West Cortland Street, Chicago, Illinois.

17. On or about February 6, 1977, AUREA VASQUEZ, a/k/a "Gloria Montalvo", ENRIQUETA COLON, a/k/a "Catina" and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, had a conversation at 31-28 West Cortland Street, Chicago, Illinois.

18. On or about February 6, 1977, AUREA VASQUEZ, a/k/a "Gloria Montalvo", and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, examined \$110,000 in cash in the vicinity of Kelsey and Cortland Streets, Chicago, Illinois.

19. On or about February 8, 1977, ENRIQUETA COLON, a/k/a "Catina", and JOSE A. AGOSTO-CONCEPCION, a/k/a "Indio", the defendants, delivered a sample of approximately 25.4 grams of heroin to another at 31-28 West Cortland Street, Chicago, Illinois.

20. On or about February 8, 1977, GABRIEL URBINA-ASTORGA, the defendant, traveled from Chicago to Aurora, Illinois.

21. On or about February 8, 1977, in Chicago, Illinois, GABRIEL URBINA-ASTORGA, the defendant, drove a car which had approximately 3,122.8 grams of heroin in its trunk.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 3rd day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 34.44 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 7th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance to wit, approximately 173.10 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 12th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 48.77 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 26th day of January, 1977 in the Southern District of New York, JUAN RAMON VASQUEZ, a/k/a "Ramon Ramos" and LUIS ANGEL REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 457.63 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

Marian F. Jordan
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

(S) 77 Cr 133

Form No. USA-230-274 (Ed. 9-25-55)

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

JUAN RAMON VASQUEZ, a/k/a "Ramon
Ramos", LUIS ANGEL REYES, AUREA
VASQUEZ, a/k/a "Gloria Montalvo"
PEDRO LUGO, ENRIQUETA COLON, a/k/a
"Catina", GABRIEL URBINA-ASTORGA,
JOSE A. AGOSTO-CONCEPCION, a/k/a
"Indio" and JOHN NARVAEZ,

Defendants.

INDICTMENT

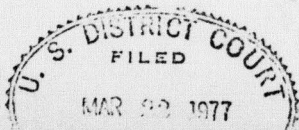
S 77 Cr. 133 (LWP)

Title 18, U.S.C. § 2, Title
21, U.S.C. §§ 812, 841(a)(1),
841(b)(1)(A) and 846.

ROBERT B. FISKE, JR.
United States Attorney.

A TRUE BILL

Manon F Jordan
Foreman.



March 22, 1977 - Filed Indictment
Pierce as Relates and Supplies
77 Cr. 133 (LWP). Notary

March 22, 1977 - Dept Perez present
Ed Panzer - Dept pleads not
on counts 1 + 2. Dept pleads
each of cts 3, 4 + 5 of this superseding
PSI ordered - Sentence April 25, 1977
Application for reduction of bail dim
remains at \$25,000 cash or surety
filed on Ind. 77Cr. 133. Dept Perez
Ind. 77Cr. 133 upon Government's application

March 24, 1977 - Dept Aurea Vasquez present
alt. Paul Lieber - Dept is aware
superseding indictment - pleads guilty
PSI ordered - Sentence May 5, 1977
Bail remains at \$50,000 FRB
by Maria + Anna Rodriguez
moves to reduce Ind. 77Cr. 133 as
Houston Motion granted.

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Luz

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guilty on
indictment.
77 at 5
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G. G.
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Pierce

pleads not guilty. Dept continued Remanded in lieu
\$50,000. c/s. bail.

Dept. Pedro Lugo (Atty: James P. Mc Govern) plea
not guilty. Dept continued Remanded in lieu of bail
at \$25,000. c/s.

Dept. John Narvaez (Atty: Jack Lipson) plea
not guilty. Dept. continued Remanded in lieu of
bail at \$25,000. c/s.

Dept. Enriquetta Colon (Atty: David Zapp)
pleads not guilty. Dept. free on bail, ie, \$10,000. PRB
by 10% cash. Dept to comply with other conditions of bail
detailed in superseded indictment.

Dept. Gabriel Urbina - Astorga (Atty: Richard
Selzer
present for arraignment purposes only) pleads not guilty
through interpreter Richard Schoen (sworn). Dept.
continued Remanded in lieu of bail fixed at \$25,000. c/s.

Dept. Jose Agosto - Concepcion (dept. not present
no counsel present). Court directs a not guilty plea
entered. Dept. continued Remanded in lieu of bail fixed
at \$25,000. c/s.

Entire case referred to Pierce as being related
to and superseding 77 CR. 133. (LWP). All bails
previously fixed in superseded indictment are to apply to
this indictment.

Metzger

April 5, 1977 - Dept Concepcion present w/Atty Helena Solledon - is
arraigned on new superseding indictment. Dept pleads guilty on count 1 (other
indictment Tiana Garcia. P.S.I. ordered. Sentence May 4, 1977 at 4 PM
is dismissed on the superseded indictment. Bail of \$25,000 cash or surety
cont'd. Dept Lugo present w/Atty James Mc Govern. Dept.
withdraws plea of not guilty and pleads guilty on count 1. He
is ordered. Sentence May 4, 1977 at 4 PM. Bail being held as to
Dept Lugo. Bail reduced to \$15,000 surety bond. Both of
cont'd Remanded in lieu of bail. Dept Lugo dismissed on the super
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April 6, 1977 - Jury in. Deliberations on the 1st issue. Colon + 7 counts on counts as charged

April 7, 1977 - Trial continued

April 11, 1977 - Trial continued

April 12, 1977 - Trial continued

April 13, 1977 - Trial continued

April 14, 1977 - Trial continued

April 18, 1977 - Trial continued. Court charges jury. Jury

~~April 19, 1977~~ - Jury returns with a partial verdict as to
Deft Ramon Vasquez. Jury finds Deft Juan Ramon Vasquez
guilty on count 1.

April 19, 1977 - Deliberation continued. Jury finds Deft
Colon guilty on count 10. P.S.I. ordered - Sentence 5/31/77
at 4:30. Bail continued at \$10,000 PRB sec. by 10 T. Sec.
Bail limits extended to Northern District of Illinois.

Jury further finds Deft Narvaiz guilty on count 1
as charged. Sentence June 1, 1977 at 4:30. Deft
continued Remanded in lieu of bail as previously fixed
at \$25,000 cash or surety.

Jury finds Deft Juan Ramon Vasquez guilty on
each of cts. 2, 3, 4 and 5. P.S.I. ordered - Sentence
June 16, 1977 at 4:30. Deft continued Remanded in
lieu of bail fixed at \$50,000 C/S

April 26, 1977 - Deft Perez ^{Sentence} Sentenced to Six (6) years on each
of cts. 3, 4 + 5 to run concurrently with each other. Purs to provisions
of T-21, U.S. Code, Sect 841, the defendant is placed on special parole
for a term of six (6) years to commence upon expiration of sentence.
Purs to provision of T-18, Sect 4205 (b)(2) U.S. Code, Deft shall become
eligible for parole at such time as the Parole Commission may
determine. Counts 1 + 2 dismissed. Deft Remanded

May 4, 1977 - Deft Concepcion present w/atty Salas - Deft sentenced to
Eight (8) years on count 1. Purs to T-21 Sect 841 - Deft is
placed on special parole for a term of 4 years to commence upon
expiration of sentence. Remanded

May 5, 1977 - Deft Manuel Vasquez present w/atty P. Lisher - Deft
sentenced to Seven (7) years on count 1. Purs to provision of T-21 Sect
841 Deft placed on 6 year special parole. Remanded

May 2, 1977 - Deft Lancy present w/atty P. Lisher - Deft
sentenced to 6 years on count 1. Purs to provision of T-21 Sect
841 Deft placed on 6 year special parole. Remanded

June 2, 1977 - Dept Colon present in Fed custody. Dept is dismissed on the superseded indictment (77Cr 133). Dept remanded. Dept has 10 days to file notice of appeal.

June 2, 1977 - Dept Colon present in court. ^{Priest} Three (3) years on count 1. Pres. R. T. 21, 15 Code, Sect 84, Dept is placed on special parole for a term of 3 years, to commence upon expiration of sentence. Dept remanded.

Dept is dismissed on the superseded indictment. (77Cr 133)

June 6, 1977 - Dept Juan Ramon Vasquez present w/att Sidney Marks. Dept sentenced to Ten (10) years on each of counts 1 thru 5 inclusive. To run concurrently with each other. Dept placed on Spec. Parole for a term of Three (3) years to commence upon expiration of sentence. Dept remanded. Dept is dismissed on the superseded indictment 77Cr 133. ^{99.}

June 9, 1977 - Dept Lugo present w/att Jane McGovern ^{Priest} Six (6) years on count 1. Dept placed on special parole for a term of Six (6) years to commence upon expiration of sentence. Dept to receive credit for time served in Federal custody from 2/8/77 to this day. Remanded Dept dismissed on superseded indictment. ^{Priest}

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UNITED STATES OF AMERICA

vs.

S-77 Cr. 133(LWP)

JUAN RAMON VASQUEZ et al.,

Defendants.

New York, N. Y.

April 18, 1977 - 3:15 p.m.

(Jury in box:)

THE CLERK: The Court is about to charge the jury. All spectators wishing to leave the courtroom will please do so now or remain seated until the completion of the Court's charge.

MR. McNAMARA: Your Honor, before the Court begins, there was one subject that had been discussed outside of the jury's presence before lunch. Does the Court believe that subject has been handled in a final manner, or should it be brought up for discussion again?

THE COURT: Nothing further.

CHARGE OF THE COURT

THE COURT: (Pierce, D. J.) Counsel, Mr. Foreman and ladies and gentlemen of the jury:

Let me thank you for extending yourselves to accommodate the hours which have been demanded of you. It is not

the usual course that a time schedule such as occurred in this case would be the hours for a trial here, but every now and then it happens, and under the circumstances we were faced with it was necessary to ask you for your cooperation, and we thank you for the cooperation and the sacrifices which you have made which enabled us to go forward in this fashion.

We also thank you for your service on this jury. By serving on the jury you make an important contribution to the fair and impartial administration of justice, and for that we are all indebted to you.

I also wish to thank the attorneys in this case for their conduct during the trial. They have represented their respective clients' positions with care and dedication.

I ask you now to pay careful attention to what I am about to state to you by way of instructions as to the law which applies in the case. I ask you to keep in mind that every week in this courthouse juries struggle with these principles and apply them to the evidence presented in cases before them, just as you are going to be asked to struggle with these principles and apply them to the evidence presented before you.

Furthermore, if you wish any portion of this charge reread because you didn't follow it or didn't understand it or for whatever reason, you have but to send out a note

indicating what portion of the charge you wish reread, and that will be reread to you.

First let me point out some general principles as to your duty as to what you should consider and not consider during your deliberations.

As you have heard, it is the Judge's function to instruct you as to the law which applies in the case, and it is your duty to accept the law as I state it to you, and it is your duty to apply the law to the facts in this case as you find those facts to be from the evidence in the case. I ask you not to single out any one instruction alone as stating the law but rather to consider the instructions as a whole.

The logical result of your application of the law to the facts as you find them in this case should be a verdict.

You are the exclusive judges of the facts in this case. You are the ones who must pass upon the weight of the evidence. You must determine the credibility of the witnesses. You must resolve any conflicts which exist in the evidence. You are to draw such reasonable inferences as may be warranted by the evidence in the case.

With respect to any matters of fact, it is your recollection and only yours which governs. Anything the attorneys for any party here may have said with respect to

any matters in evidence or as to any factual matters is not to be substituted for your own independent recollection of the evidence or of the facts in this case, and anything which I have said or may say with respect to any matters in evidence or as to any factual matters is not to be substituted in lieu of your own independent recollection.

You are not to assume that I have any opinion as to whether or not any of the defendants is guilty or not guilty or as to the truth or falsity of the charges asserted in this indictment. The fact that I have asked questions, granted or denied motions in the course of the trial is not to be taken by you as an indication that any of the defendants is believed by the Court to be guilty or not guilty.

Further,, the attorneys have the right on the offer to certain evidence to press legal objections, and in doing so, they are simply performing their duty.

In your deliberations to determine the facts and whether the Government has established the elements of the crimes charged, you are to consider solely the testimony which you have heard from the witnesses and any tapes which have been received into evidence. You are to consider any stipulations of fact the lawyers have agreed upon and the exhibits which have actually been received into evidence and even any lack of material evidence, but nothing else.

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2 I told you earlier in the trial that certain evi-
3 dence was being received subject to connection. I have in-
4 structed you that I have found that this evidence was con-
5 nected and thus that it might be considered by you, along
6 with all other evidence in the case, and please remember that
7 this ruling does not in any way represent a finding by this
8 Court as to what the facts are. That determination must be
9 made by you, the jury. I have simply ruled that the evidence
10 in this case must be considered by you in your function of
11 deciding what the facts are.

12 In the determination of whether a defendant is
13 guilty or not guilty of the crimes charged, you must remember
14 that guilt is personal and that the determination of whether
15 a defendant is guilty or not guilty must be determined solely
16 on the evidence admitted as to the defendant you are consider-
17 ing.

18 The indictment names eight defendants in all. Only
19 three are on trial before you. They are the only persons
20 whose guilt or innocence you must announce in your verdict,
21 although, as I will explain to you shortly, in considering
22 whether any of these persons is guilty or not guilty, you
23 may have to determine the nature of the participation, if
24 any, of the named or alleged co-conspirators.

25 In making your determination of whether a defendant

1 is guilty or not guilty, you must bear in mind that guilt is
2 personal. Whether a defendant is guilty or not guilty must
3 be determined separately as between defendants, and you must
4 assess the evidence with respect to the defendant you are
5 considering solely on the basis of the evidence presented
6 against that defendant or the lack of evidence against that
7 defendant.
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9 The case of each defendant stands or falls upon
10 the proof or lack of proof of the charges against the par-
11 ticular defendant you are considering and not against somebody
12 else.

13 As you approach the performance of your function
14 in this case, that is, the determination of whether each of
15 the defendants is guilty or not guilty, please remember that
16 it is your duty to weigh the evidence calmly and dispassion-
17 ately and without sympathy or prejudice for or against any
18 party. The fact that the Government is a party here or that
19 the prosecution is brought in the name of the United States
20 of America entitles it to no greater consideration than that
21 accorded to any other party in this case, and, by the same
22 token, it is entitled to no less consideration. All parties,
23 Government and individuals alike, stand equal before the
24 law.

25 Each of the three defendants on trial here has

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2 pleaded not guilty to the count or counts in which they are
3 charged. Consequently, if any defendant is to be convicted,
4 the Government has the burden of proving each and every ele-
5 ment of the crimes charged against that defendant beyond a
6 reasonable doubt.

7 I am going to tell you more about what those ele-
8 ments are, somewhat later.

9 The burden of proving guilt beyond a reasonable
10 doubt never shifts. It remains upon the Government throughout
11 the trial. The law never imposes upon a defendant in a
12 criminal case the burden of calling any witnesses or produc-
13 ing any evidence. You may draw no unfavorable inference
14 against a defendant because he or she did not take the
15 stand and testify. In addition, you may not speculate as to
16 why a defendant chooses not to testify. Nor may you specu-
17 late as to what a defendant might have stated had he or she
18 chosen to testify.

19 In every criminal case there is a constitutional
20 rule which every defendant has the right to rely upon. It
21 is the rule that no defendant is compelled to take the wit-
22 ness stand. It is the prosecution which must prove a defend-
23 ant guilty as charged beyond a reasonable doubt. A defend-
24 ant is not required to disprove anything. He or she is not
25 required to establish his or her lack of guilt.

Also, a defendant has no obligation to call any witnesses on his behalf or offer any evidence whatsoever.

In short, it is up to the Government to prove beyond a reasonable doubt every element of the crimes charged in the indictment.

Each of the three defendants on trial is presumed to be not guilty of the accusations contained in the indictment, and this presumption continues throughout the trial and even during the course of your deliberations in the jury room; and so the presumption of innocence is sufficient to acquit a defendant of crimes charged unless the presumption is overcome by evidence that satisfies your mind beyond a reasonable doubt of the guilt of the defendant you are considering.

Unless you are so satisfied, it is your sworn obligation to find that defendant not guilty. If you are so satisfied, it is your sworn obligation to find that defendant guilty.

So the question arises: what is a reasonable doubt? It is a doubt which a reasonable person has after carefully weighing all the evidence. It is the kind of doubt which would make you hesitate to act in the most important affairs of your own life.

A reasonable doubt is a doubt which appeals to your

reason, your judgment, your common sense and your experience. It is not caprice or whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty, nor is it sympathy for any party.

If after a fair and impartial consideration of all of the evidence or lack of evidence you can honestly say that you do not have an abiding belief as to the guilt of the defendant you are considering, then you have a reasonable doubt, and it is your duty to acquit.

On the other hand, if after a fair and impartial consideration of all of the evidence you can honestly say that you do have an abiding belief as to the guilt of the defendant you are considering, then you have no reasonable doubt, and it is your duty to convict.

A reasonable doubt does not mean positive certainty, beyond all possible doubt. The law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt.

From time to time you may have heard reference made to direct evidence and to circumstantial evidence. Let me say a word about the difference between the two.

Direct evidence is where a witness testified to what he or she saw, heard or observed, what he or she knows

1 of his or her own knowledge, something which comes to the
2 witness by virtue of his or her senses. That is direct
3 evidence.
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5 Circumstantial evidence is evidence of facts and
6 circumstances from which one may infer connected facts which
7 reasonably follow in the common experience of mankind.

8 To state it somewhat differently, circumstantial
9 evidence is a fact or a series of facts in evidence which
10 have a logical tendency to lead the mind to the conclusion
11 that another fact exists, even though there is no direct
12 evidence to that effect.

13 Let me give you a brief example.

14 If when you filed out of this courtroom during a
15 recess you could see that it was raining outside, and all
16 of the windows in the courtroom were closed and you saw that
17 this was so, and all of the window sills beneath the windows
18 were dry, but it was still raining outside. Then, after a
19 ten- or fifteen-minute recess, you came back to the courtroom,
20 only to find that all of the windows were still closed, and
21 you see that it is still raining, but now the sills are all
22 wet.

23 You could conclude that someone had opened the
24 windows and that rain had come into the courtroom and fallen
25 upon those window sills, and you would arrive at such a con-

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2 clusion from circumstantial evidence. In other words, you
3 would infer on the basis of reason and common sense from
4 one or more established facts the existence of some further
5 fact. You would arrive at this conclusion from circumstan-
6 tial evidence.

7 In other words, a conviction may not rest upon
8 suspicious circumstances alone. However, circumstantial
9 evidence, if believed, is of no less value than direct evi-
10 dence, for in either case you must be convinced beyond a
11 reasonable doubt of the guilt of the defendant you are con-
12 sidering.

13 Now, there are times when different inferences
14 may be drawn from the same facts, whether proved by direct
15 or by circumstantial evidence. The Government asks you to
16 draw one set of inferences. The defendant or defendants
17 ask you to draw another. It is for you and you alone to de-
18 cide what reasonable inferences you choose to draw from the
19 evidence in this case.

20 Indeed, it is your duty to determine the reasonable
21 inferences to be drawn from the facts as you find those
22 facts to be from the evidence, but you may not indulge in
23 guesswork or speculation.

24 There are a number of factors which are not evi-
25 dence in the case and which you may not under any circum-

stances consider during your deliberations.

First, if during the course of the trial a question was asked and an objection was made and I sustained the objection, you are to disregard the question and any alleged facts contained in the question.

If there was an answer to the question, you are to disregard the answer.

If I ruled that an answer be stricken from the record, you are to disregard the answer and the question in your deliberations. They are not evidence, and therefore they cannot be considered by you in any respect.

You will recall that I told you at the beginning of this trial that an indictment is not evidence. It is a procedure by which persons accused by a grand jury of crime are brought to trial. Whether a person accused is guilty or not guilty of the crimes charged is determined by a trial jury, such as you.

The Government has introduced evidence of the acts and declarations of the defendants and certain alleged co-conspirators who are not on trial here and have not been named as defendants. You may not draw any inference, favorable or unfavorable, for or against the Government or the defendants on trial, from the fact that certain persons are not named as defendants or, having been named, are not on

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trial before you now. They are absent for a variety of reasons. You are not to speculate as to the reasons why certain individuals are not on trial or not named as defendants. These matters are wholly outside your concern and have no bearing upon your functions as jurors.

I should tell you that, as you are well aware, there have been some occasions when we have had to confer outside of your hearing. You are not to speculate as to what was being discussed. Any such conferences were held with the attorneys to avoid having you listen to discussion on questions of law, which concern only counsel and the Court.

The Government has offered evidence concerning a statement given to an assistant United States Attorney by the defendant John Narvaez. The notes of the assistant United States Attorney are in evidence as Government Exhibit 8. The Government asks you to consider whether this statement by Narvaez was false.

The defendant Narvaez contends that this statement is entirely consistent with the other evidence in the case and thus that it was not false.

It is for you, the jury, to decide whether this statement was false or whether it is consistent with the other evidence in the case. If you find that the statement

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2 was false and that it was given by Narvaez in an attempt to
3 exonerate himself, you may consider the statement as circum-
4 stantial evidence from which consciousness of guilt or
5 criminal intent may be inferred.

6 Whether or not the evidence of the defendant
7 Narvaez's statement points to a consciousness of guilt and
8 the significance if any to be attached to any such evidence
9 are matters for your determination.

10 Furthermore, while false exculpatory statements
11 made to law enforcement officials are circumstantial evidence
12 of a consciousness of guilt and have independent probative
13 force, falsehoods told by a defendant in the hope of extric-
14 ating himself from suspicious circumstances are insufficient
15 proof on which to convict where other evidence of guilt is
16 weak and the evidence before you is as hospitable to an
17 interpretation consistent with the defendant's innocence as
18 it is to the Government's theory of guilt. Whether that is
19 the case here is a matter for you to decide.

20 In any event, I caution you that evidence of any
21 such statements by the defendant Narvaez, should you find
22 them to have been made, is binding only as to the defendant
23 who actually made the statements, and any such statements
24 cannot be considered by you for any purpose as against any
25 other defendant, that is, as to the defendants Colon and

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2 Vasquez.

3 There is evidence in this case which the Government
4 asserts constitutes admissions by the defendants. Admissions
5 by a defendant, should you find such to have been made, con-
6 stitute weighty evidence against a defendant. Accordingly,
7 if you find that any such admissions were made by any defend-
8 ant, you are entitled to give great weight to such evidence.

9 Certain of the evidence in this trial was admitted
10 by way of tape recordings of certain alleged conversations.
11 I instruct you that evidence admitted by means of tape re-
12 cordings is entitled to no greater and no less weight than
13 evidence submitted by any other means.

14 I repeat: evidence admitted by means of tape re-
15 cordings is entitled to no greater and no less weight than
16 evidence admitted by any other means.

17 During the course of the trial, you were given
18 transcripts of certain tape recordings as an aid to your
19 hearing of the evidence on the tapes. The transcripts were
20 admitted into evidence. They may be considered by you as
21 evidence in the case. However, the transcripts were pro-
22 vided to you only to aid you in your hearing of the tapes.
23 Therefore, if the transcripts appeared to you to vary from
24 the tapes in any respect, it is your hearing of the tapes
25 that governs.

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2 You, the jury, must determine as the trier of the
3 facts what was said in the conversations of which tape re-
4 cordings were offered into evidence.

5 The evidence shows that on two occasions when under-
6 cover agents met with certain of the defendants, Detective
7 Bruno was equipped with or used a recording device. In ad-
8 dition, the evidence shows that Detectives Bruno and
9 Caracappa recorded several telephone conversations which they
10 had with certain of the defendants in this case.

11 Just in case you have any doubts on this matter, I
12 instruct you again, as I did earlier, that the use of record-
13 ing devices in the manner described in this case is entirely
14 within the law and violated no one's rights. This is so
15 essentially because the detectives who were participants in
16 the conversations consented to have them recorded.

17 If you find that the defendant Vasquez used a
18 name other than his own name for the purpose of avoiding
19 subsequent identification, that use of a false name would
20 be a fact from which you may or need not necessarily infer
21 a consciousness of guilt on the part of the defendant.

22 You as jurors are the sole judges of the credibility
23 of the witnesses and the weight their testimony deserves.
24 You know that there is no automatic way to decide who is
25 telling the truth and who is not.

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2 Credibility can be equated with believability. If
3 a witness is credible, you may say that he or she is believ-
4 able.

5 You should carefully scrutinize all the testimony
6 given on both direct and cross-examination and otherwise,
7 the circumstances under which each witness has testified and
8 every matter in evidence which tends to show whether a wit-
9 ness is worthy of belief.

10 You should consider the witness' ability to ob-
11 serve the matters to which he has testified and whether the
12 witness impresses you as having had an accurate recollection
13 of these matters.

14 A witness may be discredited or impeached by
15 contradictory evidence or by evidence that at other times
16 the witness made statements inconsistent with the witness'
17 present testimony.

18 If you find that any witness has been impeached
19 and thus discredited, it is your exclusive province to give
20 the testimony of that witness such credibility, if any, as
21 it deserves.

22 If you find that any witness has wilfully testified
23 falsely as to any material matter, you may reject the entire
24 testimony of the witness, or you may accept such portion of
25 it as you believe to be true.

When judging credibility, consider any relation any witness may bear to any side of the case. Consider the manner in which each witness might be affected by the verdict and the extent to which, if at all, each witness' testimony is either supported or contradicted by other evidence in the case.

In this case, the defendant Juan Vasquez has taken the stand. There is no compulsion or obligation upon a defendant to testify, as I have told you, but when a defendant does take the stand and does testify, he is tested by all the same rules and guides that any other witness is tested by.

You know, of course, that a defendant is interested vitally interested, in the outcome of the case. Interest is a factor that you must take into consideration when assessing the testimony of any witness, whether presented by the Government or the defense.

There has been testimony with respect to the use of persons sometimes referred to as cooperating persons or informants or informers. These services are availed of by Government agents at times as an aid to law enforcement. The law permits the use of informers, provided the rights of a defendant are not violated.

Whether or not you approve of the use of an inform-

ant in an effort to detect law violations is not to enter into your deliberations.

You should also bear in mind that there is no duty upon either side to call a witness whose testimony would merely repeat testimony already in evidence or to offer evidence which would be merely cumulative or evidence already adduced.

Please remember again that a defendant is under no obligation to offer any evidence whatsoever.

The weight of the evidence is not determined simply by the greater number of witnesses or the greater length of time taken by either side. In weighing the testimony of the witness you must consider all of the evidence in the case.

Please remember that a defendant is under no obligation to present any evidence whatsoever.

In regard to all witnesses, the ultimate question for you to decide in passing on the credibility of a witness is: did the witness tell the truth before you? And it is for you to say whether a witness' testimony at this trial was truthful or untruthful, in whole or in part.

Now, this completes the general instructions regarding your duty and function and regarding what you may or may not consider in your deliberations, and I am now

going to turn to a discussion of the specific charges against the defendants and instruct you as to what essential elements the Government must prove beyond a reasonable doubt in order to sustain the charges against the defendants.

The indictment in this case contains five counts. Each count charges a separate violation of the Federal laws.

In the first count, each of the three defendants on trial before you is charged with conspiring to distribute and to possess with intent to distribute a narcotic drug controlled substance.

In Counts 2, 3, 4 and 5 before you, the defendant Juan Ramon Vasquez only is charged with committing what we call substantive violations of the Federal law which makes it unlawful to possess a narcotic drug controlled substance with the intent to distribute it.

Now, each count charges a separate crime. Each count must be considered by you separately, and with reference to each count in determining whether the defendant you are considering is guilty or not guilty you are to consider only evidence presented against that defendant.

We will first discuss Count 1, the conspiracy count, and then move on to the remaining counts, which we call substantive counts, in which only the defendant Vasquez is charged.

The indictment charges that the defendants conspired along with certain alleged co-conspirators to distribute and to possess with intent to distribute a controlled substance which allegedly was heroin.

Let me read the first two paragraphs of the indictment. I am going to furnish a copy of the indictment for you upon your commencing your deliberations, so I am not going to read the entire indictment, but pay attention to this.

The Grand Jury charges:

1. From onr or about the 1st day of October 1976 and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York, which filing date was March 22, 1977, Juan Ramon Vasquez, also known as Ramon Ramos, Luis Angel Reyes, Aurea Vasquez, also known as Gloria Montalvo, Pedro Lugo, Enruqueta Colon, also known as Catina, Gabriel Urbina-Astorga, Jose A. Agosto-Concepcion, also known as Indio, and John Narvaez, the defendants and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections -- and here certain Federal statutes are listed.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would

1
2 distribute and possess with intent to distribute Schedule I
3 narcotic drug controlled substances the exact amount thereof
4 being to the Grand Jury unknown, in violation of -- then
5 there are named certain Federal statutes.

6 You can read that part of the indictment and the
7 rest of it yourselves.

8 Thus, each of the defendants is charged with con-
9 spiring to violate what we call Title 21 of the United States
10 Code, Section 812, which lists heroin as a Schedule I drug
11 controlled substance, and Section 841(a)(1), which makes it
12 unlawful for any person to knowingly and intentionally
13 distribute heroin or to possess heroin with the intent to
14 distribute . . .

15 Now, before you may convict any one of the defend-
16 ants under this conspirach charge, you must first find that
17 the Government has proved beyond a reasonable doubt the
18 following three elements of the crime charged: the crime of
19 conspiracy.

20 First, that a single, overall conspiracy, as charged
21 in the indictment, existed.

22 Second, that the defendant you are considering was
23 a wilful, knowing memeber of the conspiracy and

24 Third, that at least one of the overt acts alleged
25 in the indictment was committed in the Southern District of

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2 New York by a member of the conspiracy.

3 Now, I am going to take each one of those elements
4 and explain each one.

5 As to the first element, the existence of the con-
6 spiracy charged in the indictment:

7 A conspiracy is defined as an agreement between
8 two or more persons to accomplish some unlawful purpose. It
9 is sometimes referred to loosely as a partnership in crime.
10 The gist of the crime is the agreement itself to violate the
11 law.

12 Whether or not the alleged conspirators every ac-
13 complished what it is alleged they conspired to do is immater-
14 ial to the question of whether they are guilty or not guilty
15 of the crime of conspiracy.

16 It is not necessary in order to establish the
17 existence of a conspiracy that there be evidence that the
18 persons involved entered into a formal agreement. It is
19 sufficient if two or more persons, in any manner, through
20 any means, came to a common understanding to accomplish
21 certain unlawful goals.

22 It is not required that you find that all of those
23 alleged to be co-conspirators joined in the conspiracy in
24 order for you to find that the conspiracy existed. In this
25 case, in order to find that the conspiracy charged existed,

1
2 you must be satisfied that some time between October 1, 1976
3 and March 22, 1977 an agreement existed between any person
4 named in the indictment and any other person alleged by the
5 Government to be a co-conspirator.

6 You must, further, be satisfied that it was part
7 of the agreement to accomplish the aims set forth in the con-
8 spiracy charged, that is, to distribute or to possess with
9 the intent to distribute a narcotic controlled substance, to
10 wit, heroin.

11 In this case, you must find that the Government
12 has proven beyond a reasonable doubt that the defendant you
13 are considering conspired with somebody else to possess and
14 to distribute the drug controlled substance known as heroin.

15 There has been a stipulation that if called, cer-
16 tain Government chemists would have testified that they
17 tested the samples given, to wit, Government Exhibits 1
18 through 6 in evidence, and found them to be heroin.

19 Let me read that again.

20 There has been a stipulation that if called, cer-
21 tain Government chemists would have testified that they
22 tested the samples given to them, to wit, Government Exhibits
23 1 through 6 in evidence, and that they found them to be
24 heroin.

25 I instruct you that as a matter of law heroin is

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a Schedule I controlled substance, as defined by the statute under which the defendants are charged. However, in order to convict any of the defendants you must still find beyond a reasonable doubt that the substance the defendants allegedly conspired to possess and distribute, which are Government Exhibits in evidence 1, 2, 3, 4, 5 and 6, was in fact heroin.

Now, it is not necessary for the Government to prove that the conspiracy existed throughout the entire period alleged in the indictment. It is sufficient if the Government proves that during that period of time a conspiracy arose and existed between the defendant you are considering and a co-conspirator.

A conspiracy once formed is presumed to have continued until its objectives are accomplished or until there is an affirmative act of termination by its members or until it is otherwise terminated, as, for example, by arrest.

So, too, once a person is found to be a member of a conspiracy, that person is presumed to continue his or her membership until its termination unless there is affirmative proof of withdrawal or disassociation.

In determining whether an unlawful conspiracy existed, you are to consider the evidence as to the acts and conduct of each of the persons the Government alleges were co-conspirators. If the proof convinces you beyond a reason-

able doubt that the minds of at least two persons met so as to bring about a deliberate agreement to do the acts which are set forth in the indictment as the aim of the agreement, that is sufficient proof of the existence of a conspiracy, and this would satisfy the first element of the crime charged.

If you are satisfied that a conspiracy to distribute narcotics, as described in the indictment, existed, you must then consider the evidence relating to each defendant on trial here separately to determine whether that evidence proves that the defendant you are considering was a member of the conspiracy.

The second element the Government must prove is that the defendant you are considering was a knowing and wilful member of the conspiracy or party to the conspiracy.

Knowledge exists in the mind. Obviously, it is not possible to look into a person's mind for the purpose of seeing what went on. So the only way you have for arriving at a decision on this question is for you to take into consideration all of the facts and circumstances shown by the evidence and to determine from all such facts and circumstances whether the requisite knowledge was present at the time in question.

Direct proof of knowledge is not necessary. Knowledge may be inferred from all the surrounding circum-

stances.

An act is said to be done knowingly if it is done voluntarily and purposefully and not because of a mistake or accident, mere negligence or for some other innocent reason.

An act is done wilfully if it is done knowingly and deliberately, with the purpose of disobeying or disregarding the law.

In this case, you must be satisfied beyond a reasonable doubt that the defendant you are considering did wilfully and knowingly join the conspiracy, aware of its unlawful aims.

It is not necessary that a person be fully informed as to the details of the scope of the conspiracy charged. On the other hand, the mere fact that a defendant may be present at certain meetings or that a defendant may be present when certain acts are done in furtherance of the conspiracy or that a defendant may be seen with one of the co-conspirators does not constitute enough to make that defendant a conspirator. Nor is knowledge of the conspiracy without agreement to participate enough. Before you can find that a defendant in this case was a member of the conspiracy charged you must first find that the defendant you are considering knowingly and wilfully joined the conspiracy charged.

Thus, even if you find that a conspiracy existed

and that the defendant you are considering unwittingly aided the conspiracy, unaware of its unlawful object through, for example, a casual favor for a friend, that is insufficient to conclude that a defendant was a wilful member of the conspiracy charged.

Accordingly, you must look to the person acts and statements of each defendant to determine whether such evidence establishes that the defendant you are considering joined the conspiracy knowingly and wilfully.

The Government must prove more than mere knowledge or negative acquiescence in the criminal conduct of others. Mere willing participation in the acts with alleged co-conspirators, even with general knowledge that their intent was to violate the law is insufficient to establish membership in the conspiracy. There must be something more.

In order for the Government to prove that any of the defendants was a member of the conspiracy, it must prove that the defendant, with specific criminal intent, in some sense sought to promote the venture, to make it his own or her own or that the defendant had a stake in the outcome.

In deciding this question, you must look to the words and deeds of the defendant you are considering as well as to all the surrounding circumstances in order to determine whether the defendant knowingly and wilfully became a member

of the unlawful venture.

You must bear in mind that a defendant's participation in the alleged conspiracy can be established only by proof of that defendant's words and deeds.

When two or more persons enter into a conspiracy they become agents for one another in carrying out that conspiracy. If you find that a conspiracy existed and that a particular defendant was a knowing and wilful member of the conspiracy or that a particular person was a knowing and wilful member of that conspiracy, then that person's acts and declarations which are performed during the duration of the conspiracy and in furtherance of its aims are binding upon any other person whom you find was also a wilful member of the same conspiracy, just as though that person had performed the acts and made the declarations himself or herself, and this is so even if the person did not know about the acts or statements of the other person and was not there when such acts or statements were done or made.

The guilt of a conspirator is not governed by the extent or duration of the conspirator's participation or by whether he or she had knowledge of all of its operations. Even if one joined the conspiracy after it was formed and was engaged in it to a degree more limited than others, that person is equally culpable so long as he or she was a co-

conspirator.

It is not required that all of the co-conspirators know each other or even that they had associated with each other before. A defendant may know only one other member of the conspiracy, but if the defendant knowingly and wilfully enters into an unlawful agreement with that member of the conspiracy, then the defendant becomes a party to the entire unlawful venture charged here.

Thus, if you find that the defendant you are considering was a member of the conspiracy, then however limited that defendant's role may have been in furtherance of the unlawful aims of the conspiracy, the defendant is responsible for all that was done in furtherance of the conspiracy by any other member of the conspiracy.

It is important to note that this principle applies only to the acts and declarations done or made during the period of the conspiracy and in furtherance thereof, that is, to carry out an unlawful objective or purpose of the conspiracy.

The third and last element of the charge of conspiracy is what is called the overt act element. An overt act need not in itself be a criminal act. It is one of the elements of the conspiracy charge, because it demonstrates, where found to exist, that the conspirators have gone beyond

2 the stage of merely thinking about an illegal goal. It can
3 be any act, such as, for example, a meeting, as long as it
4 is an act performed in furtherance of the conspiracy.

5 The Government need not prove that all of the overt
6 acts alleged in the indictment were performed or that the
7 overt acts were performed at the precise time or place
8 alleged in the indictment. It is sufficient if it proves
9 that one of the acts alleged was performed by somebody you
10 find to have been a member of the conspiracy charged and that
11 such an act occurred in the Southern District of New York --
12 and that would include Manhattan and the Bronx -- and that
13 such act was done in furtherance of the conspiracy and that
14 it occurred during the period of the conspiracy as charged.

15 The overt acts are set forth in the indictment. I
16 am not going to read them. You can read them yourselves from
17 the indictment, which will be sent into the jury room.

18 If you determine that the conspiracy as charged
19 existed, it is not necessary for you to consider whether the
20 defendant you are considering committed or participated in
21 an overt act, since, as I told you a moment ago, the acts
22 of any member of the conspiracy done in furtherance of the
23 conspiracy become the acts of all other members of the con-
24 spiracy.

25 I instruct you as a matter of law that the Borough

1 of Manhattan is in New York City and is in the Southern
2 District of New York, where the Government alleges certain
3 of these acts occurred. However, you must still find that
4 one of the overt acts occurred and that it occurred in the
5 Southern District of New York.
6

7 To conclude the conspiracy charge, if upon all the
8 evidence that you believe and consider relevant you are
9 satisfied that the Government has proved beyond a reasonable
10 doubt each of the three elements of the crime of conspiracy
11 as to the defendant you are considering, then you will re-
12 turn a verdict of guilty as to that defendant. If you are
13 not so satisfied, you will return a verdict of not guilty
14 as to that defendant.

15 The three elements, once again, are:

16 That a single, overall conspiracy, as charged in
17 the indictment existed;

18 That the defendant you are considering was a wil-
19 ful, knowing member of the conspiracy, and

20 That at least one of the overt acts alleged in the
21 indictment was committed in the Southern District of New York
22 by a member of the conspiracy, in furtherance of the aims of
23 the conspiracy.

24 Now, I have the substantive counts to give you
25 next. I would suggest you stand for a few minutes and let

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2 the blood circulate a little bit.

3 (Pause.)

4 THE COURT: In Counts 2, 3, 4 and 5 of the indict-
5 ment, the grand jury charges that the defendant Juan Ramon
6 Vasquez, together with another defendant, not on trial before
7 you, Luis Angel Reyes, unlawfully, intentionally and know-
8 ingly did distribute and possess with intent to distribute
9 a Schedule I narcotic drug controlled substance, to wit,
10 heroin.

11 Each of the second through fifth counts charges a
12 separate crime, and each count must be considered by you
13 separately.

14 Counts 2 through 5 are set forth in the indictment.
15 Each count charges the possession of heroin with intent to
16 distribute, and each count charges that the alleged crime
17 took place in the Southern District of New York. You can
18 read the particulars for yourselves.

19 I instruct you with respect to these counts, as I
20 did with respect to Count 1, that as a matter of law heroin
21 is a Schedule I narcotic drug controlled substance and also
22 that Manhattan is within the Southern District of New York.

23 Before you may find the defendant Juan Ramon
24 Vasquez guilty of any of the substantive crimes charged in
25 Counts 2 through 5, you must find that the Government has

1
2 established each of the following elements as to the count
3 you are considering. There are three:

4 First, that on or about the date charged, the
5 defendant possessed a narcotic drug controlled substance with
6 intent to distribute it.

7 Second, that the defendant did so unlawfully, in-
8 tentiously and knowingly, and

9 Third, that the substance in the Government's
10 exhibits in question is in fact heroin.

11 Now, you will note that the first element of the
12 offense charges "possessed with intent to distribute" the
13 drug. The word "possessed" is used in its everyday, ordinary
14 sense. To possess something is to exercise dominion and
15 control over something; but there can be two types of posses-
16 sion. There is actual possession, where an individual has
17 a personal, manual or physical control over something, and
18 there is what we call constructive possession, where a per-
19 son has the power to control a thing, although it is not in
20 the actual physical possession of somebody else.

21 Thus, a person who is sufficiently associated with
22 the person who has physical custody of the thing so that he
23 is able without difficulty to cause in this case the drug
24 to be produced for a customer, say, can be said to have
25 dominion and control over the drug and therefore to have

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possession of it.

On the other hand, the mere presence of the defendant at the scene where the drug is possessed by another, even where the defendant knew that the other person had possession of the drug and even where the defendant casually facilitates the sale of the drug, is insufficient to establish possession by the defendant.

In order for you to find that the defendant Vasquez had possession of the drug under such circumstances, the Government must prove that the defendant Vasquez had a working relationship with the other person, such as would enable the defendant to assure delivery of the drug.

Unless you so find, the defendant cannot be found to have had dominion and control over the drug and cannot be said to have been in possession of it.

The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If you find that the defendant Vasquez, either alone or jointly with others, had actual or constructive possession of the heroin described in the indictment, then you may find that such heroin was in the possession of the accused within the meaning of the word "possession", as used in these instructions.

If you find that the defendant possessed the heroin

1 before the first element is satisfied you must also find that
2 the defendant possessed the drug with the intent or purpose
3 to distribute it, that is, to transfer it, to deliver it,
4 to pass it on rather than to use it for himself.
5

6 The word "intent" refers to a person's state of
7 mind. Ordinarily, intent cannot be demonstrated directly,
8 since the thought processes are not subject to direct proof.
9 You may, however, infer a defendant's knowledge and intent
10 from the facts and circumstances surrounding a defendant's
11 act or acts.

12 To sum up the first element, the Government must
13 establish that the defendant did exercise dominion and con-
14 trol over the heroin with a deliberate plan to pass it on or
15 to deliver it.

16 The second element which the Government must prove
17 to convict the defendant Vasquez of any of the substantive
18 counts of the indictment is that the defendant unlawfully,
19 intentionally and knowingly possessed the heroin with the
20 intent to distribute it.

21 "Unlawfully", of course, means contrary to law. It
22 is not necessary that the defendant knew that he was violat-
23 ing any particular statute; it is enough if you are convinced
24 that he was aware of the unlawful nature of his act.

25 An act is done intentionally if it is done wilfully

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2 and deliberately. An act is done knowingly if it is done
3 voluntarily and purposefully. Thus, before you can find the
4 second element satisfied, the Government must prove that the
5 defendant Vasquez knew what he was doing and that he did it
6 deliberately and voluntarily and with the awareness that the
7 substance in question was heroin and that he was breaking the
8 law and not because of a mistake or accident or some other
9 inadvertent or innocent reason.

10 As to the third element, you must be satisfied
11 that the substance which was possessed in each of the four
12 substantive counts in question was in fact heroin. In this
13 case, the parties have each stipulated that if certain
14 Government chemists were called they would testify that the
15 substances found in government Exhibits in evidence 1, 2, 3
16 and 4 are heroin.

17 However, this is an element of the crimes charged,
18 and hence you must find that the substances in question were
19 in fact heroin.

20 To sum it up, before you may find the defendant
21 Juan Ramon Vasquez guilty of any of the crimes charged in
22 any of Counts 1, 2, 3, 4 and 5, you must first find that
23 the Government has proved beyond a reasonable doubt each of
24 the elements I have just explained to you. If you so find,
25 it is your duty to convict on the count you are considering.

If not, it is your duty to acquit.

Now, aiding and abetting:

The Government also charges that the defendant Juan Ramon Vasquez aided and abetted another defendant, Luis Reyes, in the commission of the crimes set forth in Counts 2, 3, 4 and 5. The applicable Federal statute provides as follows:

"Whoever commits an offense against the United States or aids or abets its commission is punishable as a principal."

Accordingly, it is not necessary for the Government to show that the defendant Vasquez himself physically committed the crimes charged in order for you to find him guilty. The law provides that a person who aids or abets another in the commission of a crime is just as guilty of that offense as if he committed it himself.

Therefore, you may find the defendant Juan Ramon Vasquez guilty of the offenses charged in Counts 2, 3, 4 and 5 if you find beyond a reasonable doubt that the Government has proved that another person actually committed the crime with which the defendant is charged and that the defendant aided or abetted him in the commission of that offense.

In order to aid or abet another to commit a crime, it is necessary that the accused person wilfully and knowingly

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associated himself in some way with the crime charged and that he wilfully and knowingly sought by some act to help the crime succeed.

I have already explained to you the meaning of "wilfully and knowingly".

I instruct you that the mere presence of a defendant at the scene where a crime is being committed or mere knowledge by a defendant that a crime is being committed or the mere negative acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding and abetting. An aider and abetter must have some interest in the venture.

Now, to determine whether the defendant Juan Ramon Vasquez aided and abetted another in the commission of the offenses with which he was charged in Counts 2 through 5, ask yourselves these questions:

Did he participate in it as something he wished to bring about?

Did he associate himself with the venture charged, knowingly and wilfully?

Did he by his action seek to make the venture succeed?

If he did, then he is an aider and abetter and therefore guilty of the crime you have found to have been

committed.

However, I instruct you that you may not find a defendant guilty of aiding and abetting unless you have found that every element of the possession of heroin with intent to distribute, as defined by me in these instructions earlier, was committed by some person or persons and that the defendant knowingly and wilfully participated in its commission.

Now, entrapment:

The defendant Juan Ramon Vasquez asserts as to these charges that he was the victim of entrapment by undercover agents representing the Government. The word "entrapment" that I have just used is a legal term. It has a technical meaning, not that of popular speech or colloquial useage. Therefore, I must explain the meaning of the word "entrapment as it is used in the law.

Criminal activity is such that sometimes undercover strategies are necessary methods to be used by law enforcement officers. The function of law enforcement is not only the prevention of crime but also the detection and apprehension of criminals. Manifestly, that function does not include the manufacturing of crime.

The defense of entrapment is based upon the policy of the law not to ensnare or entrap innocent persons into the

1
2 commission of a crime, but a line must be drawn between the
3 entrapment of the unwary innocent and the setting of traps
4 for the unwary criminal.

5 A basic feature of entrapment is that the idea or
6 design of committing the crimes charged originated with a
7 law enforcement officer rather than with a defendant, that
8 the defendant had no previous disposition, readiness, intent
9 or purpose to commit the crimes charged and that the law en-
10 forcement officer or Government employee implanted in the
11 mind of an innocent person the disposition to commit the
12 crime charged and instigated and incited that commission in
13 order that a defendant might be arrested and prosecuted.

14 I instruct you that before you can consider the
15 defense of entrapment, you must first find that each of the
16 elements of the crime you are considering has been satisfied
17 beyond a reasonable doubt. In other words, before you con-
18 sider whether Juan Ramon Vasquez was entrapped into committing
19 a crime, you must first determine that a crime was in fact
20 committed.

21 If you find that a crime was committed, you must
22 then consider the entrapment defense. In determining whether
23 entrapment occurred, if you find that an agent or employee of
24 the Government merely afforded to the defendant Vasquez a
25 favorable opportunity or facility for the commission of the

1 crime charged, such conduct on the part of the Government
2 does not in itself constitute entrapment. Entrapment would
3 occur only if you find that the Government agents initiated
4 the crimes charged in the indictment and that the criminal
5 conduct of the defendant Vasquez was the product of the
6 Government's activities.
7

8 If you do so find, I instruct you that the Govern-
9 ment is responsible for the conduct of the agents, and it
10 may not seek to disavow such conduct. If you find any cred-
11 ible evidence creating the reasonable possibility that the
12 Government instigated or otherwise induced the defendant Juan
13 Vasquez to commit any of the crimes charged in this case,
14 then the Government must prove beyond a reasonable doubt
15 that such inducement was not the cause of the crime, that is,
16 the Government must prove that the defendant had been pre-
17 disposed and willing to commit the crime.

18 If the Government has satisfied you beyond a reason-
19 able doubt that the defendant Juan Ramon Vasquez was ready
20 and willing to commit the offense and was awaiting a favorable
21 opportunity to commit the offense, then you may find that
22 such inducement which brought about the offense was no more
23 than the providing to the defendant of a timely or convenient
24 opportunity to commit the offense.

25 In such circumstances you may find that the

Government has not seduced an innocent person but has only provided the means for that person to effectuate or realize his own then existing purpose, and if you so find, then you must convict, providing, as I have instructed you, that you have found each of the essential elements of the crime charged proved beyond a reasonable doubt.

It is important that you understand that the defendant is not required to prove his entrapment. On the contrary, if you find some evidence that the Government initiated the crime charged, then the Government is obliged to prove beyond a reasonable doubt that the defendant was not entrapped.

If you find that the Government has not met this burden, then you must acquit, even if you find that each of the elements of the crime has been proved.

Finally, you should bear in mind that the defendant Juan Ramon Vasquez asserts the defense of entrapment with respect to each of the five offenses with which he is charged. Since each offense charged is separate, you should consider the entrapment defense separately with respect to each count.

Now, I have described the charges contained in the first count of the indictment against the defendants Vasquez, Colon and Narvaez and the four substantive counts in the indictment against the defendant Vasquez, and I have outlined

the essential elements of those charges.

Again, you should note that a separate crime or offense is charged in each of the five counts. Each charge against a defendant and the evidence pertaining to it should be considered separately. The fact that you find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offenses charged against the same defendant. Likewise, the fact that you find one defendant guilty or not guilty as to any particular charge should not control your verdict as to the other defendants.

Also, you are not to consider in any way or speculate about any sentence which a defendant may receive if found guilty. It is the function of the jury to deliberate and determine whether or not the defendant is guilty or not guilty or the offenses charged in the indictment, and it is the Judge's function to dispose of the case thereafter.

The most important part of this case is that which you as jurors are about to perform, because it is you who will have to decide whether the defendants or any of them are guilty or not guilty of the crimes charged. I know that you will try the issues that have been presented to you according to the oath which you took as jurors, and in that oath you will recall that you promised that you would well and truly

try the issues joined in this case and a true verdict render. If you follow that oath and if you try the issues without confusing your thinking with emotion you will arrive at a just verdict.

As you deliberate, please be careful to listen to the opinions of other jurors as well as to ask for an opportunity to express your own views. No one juror holds the center of the stage in the jury room, and no one juror controls or monopolizes the deliberations. You must all express your views, and if you become convinced that your original view was wrong with respect to any matter, do not be afraid to change your vote because of pride in your original opinion or the stubbornness of another person.

However, do not surrender your honest belief simply because you are outnumbered.

You understand that in a criminal case in this court your verdict as to each count must be unanimous, that is, it must be joined in by each and every one of you.

The form of the verdict will be as to each defendant guilty or not guilty as to the counts in the indictment in which each defendant is charged.

During your deliberations, you may send for any exhibits that you may wish to review, and you may request that any of the testimony be read back to you. You may also

2 request that any portion of this charge be read to you.

3 We will send a copy of the indictment in to you,
4 and you must remember that it is an accusation. It is no
5 proof of anything.

6 All communications to the Court must be in writing,
7 signed by the foreman. Further, you must not reveal at any
8 time the standing of the jurors as to any defendant or as to
9 any count of the indictment during your deliberations; that
10 is, you are not to reveal the split as to any defendant as to
11 any count -- not to anyone, including the Court.

12 At any time that you have arrived at a verdict with
13 respect to any defendant, you may send out a note with re-
14 spect to that defendant, and we will take that verdict, what-
15 ever it is.

16 That is the end of the instructions.

17 Will you please step into the jury room for a few
18 minutes, but do not begin your deliberations yet. I must
19 speak with the attorneys for a brief moment, and then we will
20 call you back into the courtroom.

21 (The jury left the courtroom.)

22 THE COURT: All right. I will take exceptions.

23 Mr. McNamara?

24 MR. McNAMARA: The Government has no exceptions,
25 your Honor.

THE COURT: Do you have any exceptions, Mr. Marks?

MR. MARKS: No exceptions, your Honor.

THE COURT: Mr. Zap?

MR. ZAP: Yes, your Honor.

I would except to that portion of the instruction regarding circumstantial evidence which by implication would allow the jury to resolve any dispute or reasonable inference in favor of the Government. To put it more clearly, if a piece of circumstantial evidence admits of two reasonable inferences, one for the Government's position and one against it, then your instruction would allow the jury to resolve that particular dispute in favor of the Government.

I request that your Honor instruct the jury that if there is such a dispute in that kind of a situation, it should be resolved in favor of the defendant.

THE COURT: Your request is denied. Your statement of the law in this Circuit is incorrect. I think it was you, Mr. Zap -- although I am not sure -- who alluded to that in your summation. There was no interruption at that time.

The law in this Circuit rejects the doctrine that where the Government's evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than guilt. It also rejects the view that an inference may not properly be relied upon in support of an essential allegation

2 if an opposite inference may be drawn with equal consistency
3 from the proof. See United States versus Taylor.

4 Is there anything further? Mr. Lipson?

5 MR. LIPSON: Your Honor, I am a little bit concerned
6 about your Honor's instructions about membership in a con-
7 spiracy. I think your Honor had included everything that I
8 requested in my requests to charge, and then you went on to
9 a discussion about responsibility of the members of a con-
10 spiracy for the acts of their co-conspirators, and I thought
11 the two points, as I heard them, merged and didn't make clear
12 to the jury that on the question of conspiracy, acts of co-
13 conspirators are not something for which you are not respons-
14 ible and that you are responsible for your own acts.

15 In fact, as I look over this case, I am not sure
16 that the responsibility for the acts of co-conspirators
17 would be pertinent in this case, because if they find that
18 someone was a member of the conspiracy, we are saddling the
19 jury with surplusage, because if you are a member of the con-
20 spiracy you are guilty, and if you are responsible for one
21 or five hundred things, you are still guilty.

22 The way it came out, I think the jury may have had
23 a tendency to merge those two things in their heads.

24 I would request that your Honor make crystal clear
25 to the jury that in judging membership in the conspiracy

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this doctrine of responsibility for acts of co-conspirators does not come into play.

THE COURT: Well, I never give a conspiracy charge without feeling that there is an awful lot of surplusage. It keeps working its way into the charge. But so it is.

I did charge the jury at the end of the second element, which is the membership or participation element under conspiracy as follows:

"In deciding this question, you must look to the words and deeds of the defendant you are considering as well as to all the surrounding circumstances in order to determine whether the defendant knowingly and wilfully became a member of the unlawful venture. You must bear in mind that a defendant's participation in the alleged conspiracy can be established only by proof of that defendant's of that defendant's own words and deeds."

MR. LIPSON: Well, your Honor, I agree with you that you said it.

THE COURT: You are arguing the merger theory.

MR. LIPSON: I guess my gripe is that you didn't say it the way you said it now, and it just led into the further discussion.

THE COURT: Well, that is the sequence, and I am

going to stand by it. You have your exception.

Bring the jury back in.

(Jury in box.)

THE COURT: We have been asking you not to talk about the case with anyone or even among yourselves, and now we change, and we ask you to go and talk about it and deliberate with respect to the issues presented here.

Swear the marshal.

(The deputy marshal was duly sworn.)

THE COURT: If the alternate jurors have any personal belongings in the jury room, they should get them now. The marshal will escort you there, and please return to the courtroom.

Mr. Foreman and ladies and gentlemen of the jury, please go into the jury room and commence your deliberations. We will send in with you a copy of the indictment and pencils and paper.

The indictment will be marked as a Court exhibit.

(Court Exhibit 2 was marked for identification.)

THE COURT: The alternate jurors will remain in the courtroom.

(At 4:50 p.m., the jury left the courtroom in the custody of the deputy marshal to deliberate upon a verdict.)

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THE COURT: I would like to say to the alternate jurors, you have been no less inconvenienced than the other members of the jury. We appreciate the sacrifices that you have made and your cooperation. We thank you for your services here. You are now discharged from further service, and I understand the clerk has your certificates of service and will give them to you now.

(The alternate jurors left the courtroom.)

THE COURT: Counsel will please remain close by. I told you the other day what kind of time schedule we would observe. We will probably keep the jury deliberating not later than about six o'clock.

MR. McNAMARA: Your Honor, may the agent and I be excused for a short time so that we can return some of the exhibits to the vault?

THE COURT: Yes. I guess you will be just in time.

Mr. McNamara, I think it would be most convenient if you have the tape recorder set up in case the jury wants to have anything played back.

MR. McNAMARA: Yes; we will have it, your Honor, with the earphones, fully set up.

(Recess.)

(At 5:40 p.m., a note was received from the jury.)

THE COURT: We have a note from the jury, which is

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to be marked Court Exhibit 3.

(Court Exhibit 3 was marked for identification.)

THE COURT: The note, Court Exhibit 3, reads as follows:

"What were the three factors that constitute a conspiracy as charged to the jury by the Judge?"

I propose to read to the jury the brief recitation of those three elements of a conspiracy.

MR. LIPSON: Your Honor, I would propose that your Honor not only read the three elements but that you explain them. I suggest if they don't know what the elements are, they probably don't know what each of the elements means.

THE COURT: I will tell them that if they wish more instructions they have but to ask for them.

Bring in the jury.

(Jury in box.)

THE COURT: We have your note, ladies and gentlemen. It has been marked as Court Exhibit 3.

The note reads:

"What were the three elements that constitute a conspiracy as charged to the jury by the Judge?"

I am going to read to you the three factors as briefly stated, since I think that is what you want. If you want an elaboration of the three factors, then you have but

2 to ask for it and that will be read to you as well.

3 THE FOREMAN: Your Honor, can you read to us what-
4 ever material is in it that will help us to reach any deci-
5 sion and to have a pro and con among ourselves?

6 THE COURT: Do you want the fuller explanation or
7 merely the three scant readings? You want the fuller explan-
8 ation?

9 THE FOREMAN: The fuller explanation of the three
10 charges.

11 THE COURT: Very well.

12 Now, in the first count of the indictment, each of
13 the three defendants on trial is charged with conspiring to
14 distribute and to possess with intent to distribute a nar-
15 cotic drug controlled substance.

16 In determining whether the defendant you are con-
17 sidering is guilty or not guilty you are to consider only
18 the evidence presented against that defendant.

19 Let us discuss the conspiracy count.

20 The indictment charges that the defendants conspired
21 along with alleged co-conspirators to distribute and to pos-
22 sess with intent to distribute a controlled substance, which
23 allegedly was heroin.

24 I then read to you a portion of the indictment. I
25 assume you don't want me to read it to you again, because you

have the indictment and you can read it yourselves.

Thus, each of the defendants is charged with conspiring to violate Title 21 United States Code, Section 812, which lists heroin as a Schedule I drug controlled substance, and Section 841(a)(1), which makes it unlawful for any person to knowingly and intentionally distribute heroin or to possess heroin with the intent to distribute it.

Now, before you may convict any one of the defendants under this conspiracy charge, you must find that the Government has proved beyond a reasonable doubt the following three elements of the crime of conspiracy:

First, that a single, overall conspiracy, as charged in the indictment existed.

Second, that the defendant you are considering was a wilful, knowing member of the conspiracy, and

Third, that at least one of the overt acts alleged in the indictment was committed in this District by a member of the conspiracy, in furtherance of the conspiracy.

Let us take the first element, the existence of the conspiracy charged in the indictment.

A conspiracy is defined as an agreement between two or more persons to accomplish some unlawful purpose. It has been referred to somewhat loosely as a partnership in crime.

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2 The gist of the crime is the agreement itself to
3 violate the law. Now, whether or not the alleged conspira-
4 tors ever accomplished what it is alleged they conspired to
5 do is immaterial to the question of whether they are guilty
6 or not guilty of the crime of conspiracy.

7 It is not necessary in order to establish the
8 existence of a conspiracy that there be evidence that the
9 persons involved entered into a formal agreement. It is
10 sufficient if two or more persons, in any manner, through any
11 means, came to a common understanding to accomplish certain
12 unlawful goals.

13 It is not required that you find that all of those
14 alleged to be co-conspirators joined in the conspiracy in
15 order for you to find that the conspiracy existed.

16 In this case, to find that the conspiracy charged
17 existed, you must be satisfied that some time between October
18 1, 1976 and March 22, 1977 an agreement existed between
19 any person named in the indictment and any other person al-
20 leged by the Government to be a co-conspirator.

21 You must further be satisfied that it was part of
22 the agreement to accomplish the aims set forth in the con-
23 spiracy charged, that is, to distribute or to possess with
24 the intent to distribute the narcotic controlled substance,
25 to wit, heroin.

In this case, you must find that the Government has proven beyond a reasonable doubt that the defendant you are considering conspired with somebody else to possess and to distribute a drug controlled substance known as heroin.

There has been a stipulation that, if called, certain Government chemists would have testified that they tested the samples given to them, to wit, Government Exhibits 1 through 6 in evidence, and found them to be heroin.

I instruct you that as a matter of law, heroin is a Schedule I controlled substance, as defined by the statutes under which the defendants are charged. However, in order to convict any of the defendants, you must still find beyond a reasonable doubt that the substance the defendants allegedly conspired to possess and distribute, which are Government Exhibits 1 through 6, was in fact heroin.

It is not necessary for the Government to prove that the conspiracy existed throughout the entire period alleged in the indictment. It is sufficient if the Government proves that during that time the conspiracy arose and existed between the defendant you are considering and a co-conspirator.

A conspiracy once formed is presumed to have continued until its objectives are accomplished or until there is an affirmative act of termination by its members or until it is otherwise terminated, as, for example, by arrest.

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2 So, too, once a person is found to be a member of
3 a conspiracy, that person is presumed to continue his or her
4 membership until its termination, unless there is affirmative
5 proof offered of withdrawal or disassociation.

6 In determining whether an unlawful conspiracy
7 existed, you are to consider the evidence as to the acts and
8 conduct of each of the persons the Government alleges were
9 co-conspirators. If the proof convinces you beyond a reason-
10 able doubt that the minds of at least two persons met so as
11 to bring about a deliberate agreement to do the acts set
12 forth as the aim of the agreement, that is sufficient proof
13 of the existence of a conspiracy, and this would satisfy the
14 first element of the crime charged.

15 If you are satisfied that a conspiracy to distrib-
16 ute narcotics as described in the indictment existed, you
17 must then consider the evidence relating to each defendant
18 on trial here separately to determine whether that evidence
19 proves that the defendant you are considering was a member
20 of the conspiracy.

21 The second element the Government must prove is
22 that the defendant you are considering was a knowing and
23 wilful member of or party to the conspiracy. Knowledge
24 exists in the mind. It is not possible to look into a per-
25 son's mind for the purpose of seeing what went on. The only

way you have for arriving at a decision on this is for you to take into consideration all the facts and circumstances shown by the evidence and to determine from all such facts and circumstances whether the requisite knowledge was present at the time in question.

Direct proof of knowledge is not necessary. Knowledge may be inferred from all the surrounding circumstances.

An act is done knowingly if it is done voluntarily and purposefully and not because of mistake, accident, mere negligence or for other innocent reason.

An act is done wilfully if it is done knowingly and deliberately and with the purpose of disobeying or disregarding the law.

In this case, you must be satisfied beyond a reasonable doubt that the defendant you are considering did wilfully and knowingly join the conspiracy, aware of its unlawful aims.

It is not necessary that a person be fully informed as to the details of the scope of the conspiracy charged. On the other hand, the mere fact that a defendant may be present when certain acts are done in furtherance of the conspiracy or that the defendant may be seen with one of the co-conspirators does not constitute enough to make that defendant a conspirator, nor is knowledge of the conspiracy

without agreement to participate enough. Before you can find that a defendant in this case was a member of the conspiracy charged you must first find that the defendant knowingly and wilfully joined the conspiracy.

Thus, even if you find that a conspiracy existed and that the defendant you are considering unwittingly aided the conspiracy, unaware of its unlawful object, through, for example, a casual favor for a friend, that is insufficient evidence to conclude that a defendant was a wilful member of the conspiracy.

Accordingly, you must look to the personal acts and statements of each defendant to determine whether such evidence establishes that the defendant you are considering joined the conspiracy knowingly and wilfully.

The Government must prove more than mere knowledge or negative acquiescence in the criminal conduct of others. A mere willing participation in acts with alleged co-conspirators, even with general knowledge that their intent was to break the law, is insufficient to establish membership in the conspiracy. There must be something more. In order for the Government to prove that any of the defendants was a member of the conspiracy it must prove that the defendant with specific criminal intent in some sense sought to promote the venture, to make it his own or her own or that the de-

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2 fendant had a stake in the outcome.

3 In deciding this question, you must look to the
4 words and deeds of the defendant you are considering as well
5 as to all the surrounding circumstances in order to determine
6 whether the defendant knowingly and wilfully became a member
7 of the unlawful venture. You must bear in mind that a de-
8 fendant's participation in the alleged conspiracy can be
9 established only by proof of that defendant's own words and
10 deeds.

11 The guilt of a conspirator is not governed by the
12 extent or duration of the conspirator's participation or by
13 whether he or she had knowledge of all its operations. Even
14 if one joined the conspiracy after it was formed and was en-
15 gaged in it to a degree more limited than were others, that
16 person is equally culpable so long as he or she was a co-
17 conspirator.

18 It is not required that all of the co-conspirators
19 know each other or even that they ever associated with each
20 other before. A defendant may know only one other member of
21 the conspiracy, but if the defendant knowingly and wilfully
22 entered into an unlawful agreement with that other member of
23 the conspiracy, then the defendant becomes a party to the
24 entire unlawful venture charged here.

25 Thus, if you find that the defendant you are con-

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2 sidering was a member of the conspiracy, then however limited
3 that defendant's role may have been in furtherance of the
4 unlawful aims of the conspiracy, the defendant is responsible
5 for all that was done in furtherance of the conspiracy by
6 any other member of the conspiracy.

7 It is important to note that this principle applies
8 only to the acts and declarations done or made during the
9 period of the conspiracy and in furtherance thereof, that
10 is, to carry out an inlawful objective or purpose of the con-
11 spiracy.

12 The third element of the charge of conspiracy is
13 the overt act element.

14 An overt act need not itself be a criminal act.
15 It is one of the elements of the conspiracy charged, because
16 it demonstrates that the conspirators have gone beyond the
17 stage of merely thinking about an illegal goal. It can be
18 any act such as, for example, a meeting, as long as it is
19 an act performed in furtherance of the conspiracy.

20 The Government need not prove that all of the overt
21 acts alleged in the indictment were performed or that the
22 overt acts were performed at the precise time or place alleged
23 in the indictment. It is sufficient if it proves that one
24 of the acts alleged was performed by someone you find to have
25 been a member of the conspiracy charged and that such an act

1 occurred in the Southern District of New York and that such
2 an act was done in furtherance of the conspiracy and that it
3 occurred during the period of the conspiracy as charged.

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5 The overt acts are set forth in the indictment,
6 and you can read them for yourselves.

7 When two or more persons enter into a conspiracy,
8 they become agents for one another in carrying out that con-
9 spiracy. If you find that a conspiracy existed and that a
10 particular person was a knowing and wilful member of the
11 conspiracy, then that person's acts and declarations which
12 are performed during the duration of the conspiracy and in
13 furtherance of its aims are binding upon any other person who
14 you find was also a knowing and wilful member of the con-
15 spiracy, just as though that person had performed the acts
16 and made the declarations himself or herself.

17 This is so even if the person did not know about
18 the acts or statements of the other person and was not there
19 when such acts or statements were done or made.

20 If you determine that the conspiracy charged in the
21 indictment existed it is not necessary for the Government to
22 prove that the defendant you are considering committed or
23 participated in a particular overt act, since, as I told you
24 a moment ago, the acts of any member of the conspiracy done
25 in furtherance of the conspiracy become the acts of all other

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members of the conspiracy.

I instruct you as a matter of law that the Borough of Manhattan is in the Southern District of New York, where the Government alleged certain of these acts occurred. However, you must still find that one of the alleged overt acts occurred and that it occurred in the Southern District of New York.

So, to conclude the conspiracy charge, if upon all the evidence that you believe and consider relevant you are satisfied that the Government has proven beyond a reasonable doubt each of the three elements of the crime of conspiracy as to the defendant you are considering, then you will render a verdict of guilty as to that defendant. If you are not so satisfied, you will render a verdict of not guilty as to that defendant.

The three elements are, once again:

First, that a single, overall conspiracy as charged in the indictment existed.

Second, that the defendant you are considering was a wilful, knowing member of the conspiracy, and,

Finally, that at least one of the overt acts alleged in the indictment was committed in the Southern District of New York by a member of the conspiracy in furtherance of the conspiracy.

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All right?

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(The jury left the courtroom.)

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THE COURT: Gentlemen, you know that I don't want to keep the jury late tonight, and I thought I would let them go home at about six, but I think now we ought to leave them alone for a trifle with the instructions I have just given them.

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I would like them to go home while it is still light. They have been here late several nights, so I have not ordered any vans, and we are not going to send them out for dinner.

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About what time does it start getting dark?

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MR. LIPSON: About six-thirty.

THE COURT: Maybe we ought to re-assemble around six-thirty and let them go home at about 6:45 and resume tomorrow morning. They can resume at nine-thirty tomorrow morning.

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(At 6:30 p.m., a note was received from the jury.)

THE COURT: We have a note indicating that the jury has reached a partial verdict.

Bring in the jury.

(Jury in box.)

(The roll of jurors was called. All answered present.)

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THE CLERK: Mr. Foreman, has the jury agreed upon a verdict as to any count or any defendant?

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THE COURT: Please stand, sir.

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THE FOREMAN: We sent a note to Judge Pierce.

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THE COURT: What is your verdict, sir?

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THE FOREMAN: The decision of all the twelve jurors is that on the conspiracy charges Juan Ramon Vasquez is guilty.

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THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded. You say you find the defendant Ramon Vasquez guilty on Count 1, and so say you all?

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THE COURT: All right.

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Ladies and gentlemen, we are going to interrupt your deliberations now for the day and ask you to return at nine-thirty tomorrow morning.

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I am assuming that since you have worked so long so many evenings you would wish to return home while it is still daylight, so I have not ordered any vans or made any arrangements for you to have dinner.

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Now, you are a jury deliberating, which makes you a special kind of body now, different from what you were before today, so you must not talk with anybody or allow anybody to talk to you about this case, and you must not even discuss it among yourselves except when you are in the

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jury room, and you are not to even discuss it in the jury room until all twelve of you have assembled.

So at nine-thirty, please assemble in the jury room and resume your deliberations as soon as all twelve of you are present.

If there are any exhibits that you had in the jury room, please deliver them to the marshal. That includes the indictment.

(The jury left the courtroom.)

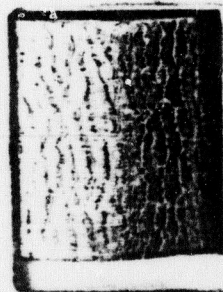
(Court Exhibit 4 was marked for identification.)

THE COURT: All right. Are there any requests at this time with reference to the defendant Vasquez? If not, we will simply continue the matter until tomorrow morning and resume at nine-thirty.

Thank you all.

(Adjourned to April 19, 1977, at 9:30 a.m.)

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2 UNITED STATES OF AMERICA

3 v.

S-77 Cr. 133

4 JUAN RAMON VASQUEZ, a/k/a RAMON
5 RAMOS, ENRIQUETA COLON, a/k/a
6 CATINA, and JOHN NARVAEZ

April 19, 1977
9:30 a.m.

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11 (In open court, jury not present.)

12 THE COURT: We are ready to proceed. The court
13 reporter is present, Miss Kohn, the interpreter, is present
14 and is still under oath. Bring in the jury.

15 Let me check the notes. One note, "Jury decision
16 as to Miss Colon." That's Court 5.

17 Court Exhibit 6: "The jury would like to hear
18 the tapes and transcripts regarding John Narvaez."

19 We will take the verdict first and then proceed
20 to the tapes and transcripts.

21 (Jury present.)

22 THE COURT: Good morning, ladies and gentlemen.
23 We have a note that you have reached a verdict with respect
24 to Enriqueta Colon. You may proceed.

25 THE CLERK: Ladies and gentlemen, please answer

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2 to your presence as your names are called.

3 (The jury roll is called, all present.)

4 BY THE CLERK:

5 Q Mr. Foreman, please rise. Has the jury agreed
6 upon a verdict as to the defendant Colon?

7 A Yes, we did, and we send a note to Judge Pierce.

8 Q What is your verdict?

9 A All the jurors, we agree, that she is guilty of
10 conspiracy.

11 THE CLERK: Ladies and gentlemen of the jury,
12 please listen to your verdict as it now stands recorded.
13 You say you find the defendant Colon guilty on Count 1 and
14 so say you all.

15 THE COURT: Anything other from the jury with
16 respect to that particular verdict? If not, we will pro-
17 ceed to the material requested with respect to Court's
18 Exhibit 6. The jury has asked to hear the tapes and re-
19 view the transcripts of John Narvaez. Please proceed. John
20 Narvaez is present, his counsel is present. Mr. Vasquez
21 and Miss Colon are present.

22 (Pause.)

23 THE COURT: Now, what is being distributed are
24 copies of what?

25 MR. McNAMARA: Government Exhibit 12 in evidence,

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your Honor.

THE COURT: All right.

MR. McNAMARA: Shall I distribute Government Exhibit 16 now as well?

THE COURT: Hold that, please.

Sequentially, the one they have now is the first of the two?

MR. McNAMARA: Correct, your Honor.

THE COURT: All right.

THE FOREMAN: Your Honor, we want to listen to both.

THE COURT: Yes, we are going to play both.

(Pause.)

(Tape marked Government Exhibit 11 in evidence is played for the jury.)

MR. McNAMARA: Shall we collect the first transcripts?

THE COURT: Yes.

(Pause.)

THE COURT: You are now about to play, Mr. McNamara?

MR. McNAMARA: Government Exhibit 15 in evidence, your Honor.

THE COURT: And the transcripts handed out is

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2 what exhibit?

3 MR. McNAMARA: Government Exhibit 16 in evidence,
4 your Honor.

5 THE COURT: Proceed.

6 (Tape marked Government's Exhibit 15 in evidence
7 is played for the jury.)

8 THE COURT: All right, if that is satisfactory,
9 then we will collect these items back from you and you can
10 resume your deliberations.

11 All right, ladies and gentlemen, you may resume
12 your deliberations.

13 (Jury resumes deliberations at 10:30 a.m.)

14 THE COURT: Now, let's take the matter of
15 Enriqueta Colon.

16 What is her status?

17 MR. ZAPP: Your Honor, her status is that she has
18 a \$10,000 bond secured by \$1,000. She currently is living
19 on 14th Street and will be able to be there until sentencing.

20 I would urge the court not to remand, although I
21 haven't heard an application to that effect, I would urge
22 the court not to remand her. I believe she is not the per-
23 son who would run and that she will come to court when
24 required.

25 THE COURT: Bail arrangements satisfactory?

MR. McNAMARA: Your Honor, the government does move that the defendant Colon be remanded at this time.

THE COURT: Any prior convictions?

MR. ZAPP: No, your Honor, none.

THE COURT: All right. I will continue present bail arrangements. I will set the sentence date for May 31st at 4:30. Counsel will make his client available to the Probation Department immediately, and the presentence investigation report is available to the government attorney and the defendant's attorney, if you wish to avail yourselves of them. Please read them at the Probation Department. Do not come to my chambers to see a copy or ask for my copy. Then if you have any additions or corrections, they can be made right at the source.

What are the bail limits formally imposed on Miss Colon?

MR. ZAPP: The bail limits at this time, I think, just extend to the Southern District. If in fact there is a possibility that she would like to return to Chicago and come back, I would certainly make an application before any step like that is ever undertaken. I will tell you exactly what steps have been taken to make sure that she will return from Chicago.

THE COURT: The bail limits continue to be the

Southern District of New York.

MR. ZAPP: Thank you, your Honor.

THE COURT: Counsel, please remain close.

Marshal, please hold the defendants Narvaez and Vasquez while we await the jury's action.

(Pause.)

MR. ZAPP: There is an application. I have spoken to her son and apparently there are funds for her to come back on May 31st. What I would do, your Honor, is make that application right now.

THE COURT: Where will she live in Chicago?

MR. ZAPP: Cortland Street or at her daughter's, Sonya Colon.

THE COURT: It's unimportant which of those addresses she is at. If you wish to give us both addresses as possible residences, it will suffice, as long as she's at one or the other.

MR. ZAPP: I will give the phone numbers to the government.

Thank you, your Honor.

(Pause.)

THE COURT: Furnish the address to the government and the bail limits are extended to the Northern District of Illinois.

MR. ZAPP: Thank you, your Honor.

(Pause.)

THE COURT: Miss Kohn, that completes our need for you here, I suppose. No one else has requested the services of an interpreter. Thank you.

(Pause.)

(Jury note at 11:10 a.m.)

(In open court, jury not present.)

THE COURT: The jury has sent out two notes. Court 7 requests copies of transcripts of two tapes of telephone calls we have just heard to be studied in the jury room.

Mr. Lipson, your response to that is?

MR. LIPSON: Your Honor, I have no objection to the transcripts being sent in to the jury provided, your Honor, you once more remind the jurors that the transcripts are just a guide and that the best evidence here, of course, are the tapes themselves and what the jurors hear as they listen to the tapes.

THE COURT: Well, they have been told that numerous times I think sufficiently. So we will send in the transcripts.

What are they, Government's Exhibits 16 and 12 in evidence?

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2 MR. McNAMARA: Yes, your Honor.

3 THE COURT: One copy or 12?

4 MR. McNAMARA: I would think it might simplify
5 things, your Honor, if we gave them 12 of each.

6 MR. LIPSON: If we are going to send them one,
7 we might as well send them 12.

8 THE COURT: Next we have Court's 8, "We would
9 like a written definition of conspiracy for reference."

10 Counsel have been asked if they would prefer to
11 have a single page definition which, where at the outset
12 the court undertook to spell out the three essential ele-
13 ments, or the entire conspiracy portion of the charge which
14 was read to the jury. Mr. Lipson has indicated as between
15 the two he would rather have the entire portion of the
16 charge concerning conspiracy sent in.

17 Mr. McNamara, I gather you don't have any ob-
18 jection to that?

19 MR. McNAMARA: I think the note is a little un-
20 clear about written definition. I would have been satis-
21 fied to send in page 40, which just lists the three elements.
22 However, if we are going to send the whole charge, as long
23 as the full charge goes in I don't have any objection.

24 THE COURT: Mr. Lipson further wishes to comment?

25 MR. LIPSON: Yes, your Honor. Insofar as the

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2 charge deals with the fact that once one is a member of
3 the conspiracy he then becomes responsible for all the
4 acts of the co-conspirators, and goes on to elaborate the
5 partnership concept, I think that in the context of this
6 case, looking at the issues concerning Mr. Narvaez, I think
7 that is surplusage. I think it will have a tendency to
8 confuse the jury. For that reason, my request would be
9 that we send in the conspiracy charge absent those sections
10 which really, I submit, have no relevance to the issue that
11 the jury here has to determine, which is, was John Narvaez
12 a member of the conspiracy.

13 I will concede for the record that if the jury
14 finds he was a member of the conspiracy, he is responsible
15 for everything else. But I don't think that's a concern
16 for the jury here. That would be a concern if this were
17 a case with substantive counts that the government was
18 seeking to convict Mr. Narvaez of under the Pinkerton
19 theory.

20 Since we don't have that here, I think it's sur-
21 plusage.

22 THE COURT: The difficulty is that you are assum-
23 ing that their sole concern is whether Mr. Narvaez was a
24 member of the conspiracy. It may be that they are past that,
25 that they have found that a conspiracy existed and that he

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2 was a member and they may be concerned with the overt act
3 question.

4 MR. LIPSON: I have no objection to your honor
5 instructing them about the third element, that there must
6 be an overt act and the overt act could be by any defen-
7 dant.

8 THE COURT: If they have gotten past the member-
9 ship, Mr. Lipson, when, if at all, do they ever get this
10 other business, though?

11 MR. LIPSON: In the context of this case, I don't
12 think that's anything that the jury should be concerned
13 with.

14 THE COURT: Because your argument is it only
15 concerns membership?

16 MR. LIPSON: No, my argument is it really is
17 only relevant in a case where there are substantive counts
18 that the government is seeking to convict the defendant of
19 under the Pinkerton theory. If he is a member and if all
20 they are concerned with now is the third element, which is
21 the overt act, the instruction on overt acts amply covers
22 that. If they find there is an overt act, he is guilty.
23 If they don't find there is an overt act, he is not guilty.

24 THE COURT: Let me understand again. When do
25 you say that the charge about agency in a conspiracy charge

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2 is properly given?

3 MR. LIPSON: Your Honor, I think it's really only
4 properly given when there are substantive counts which the
5 government is relying -- in which the government is relying
6 on the conspiracy to draw a defendant in on. What conse-
7 quence is it in any other case that he becomes liable for
8 everything the conspirators did. If there is a conspiracy,
9 if he is a member, if there is an overt act, he is guilty
10 Whether he is responsible for one thing that was done in
11 the conspiracy or 500 makes no difference except where there
12 are substantive counts.

13 THE COURT: What is your answer to that point,
14 Mr. McNamara?

15 MR. McNAMARA: I have two different kinds of
16 answers, your Honor. First I think that that point has
17 been charged to the jury, and if we are going to give them
18 the charge as a definition of conspiracy, they should have
19 the full instruction before them. I disagree with Mr.
20 Lipson as to the relevance of the agency portion of the
21 charge in this kind of case.

22 A part of the conspiracy charge is to tell the
23 jury that the conspirators need not all have engaged in the
24 same amount of activity, that someone can have a lesser role.
25 One reason for that, one reason then that they are all

1 prosecuted equally and all treated equally is because of
2 the agency concept. That even if one fellow does twice
3 as much as the second guy, they are both equally responsible
4 in this case because they are conspirators, because they are
5 doing it one for the other, because they formed this agree-
6 ment to together do something wrong and have joined in it
7 and have adopted one another as their agents to go ahead
8 in this criminal enterprise.
9

10 So, I think it's important to the central con-
11 cept of the conspiracy, it has been charged and it should
12 go into the jury room.

13 MR. LIPSON: Insofar as Mr. McNamara is suggesting
14 that I am asking to exclude that part of the charge which
15 makes clear that one can be a member of a conspiracy even
16 though he has a minor role, he is incorrect. That I under-
17 stand has to go in because that's something to be con-
18 sidered on the question of membership. We don't want to
19 mislead the jury. When we get into that part where we start
20 talking about partnership in crime, responsibility for all
21 the other acts, it has no relevance to this case. And I
22 appreciate the fact that that was given in the original
23 charge, but I think now that the jury has proceeded in their
24 deliberations, we see where they have gotten, it's not to
25 late to correct past errors.

I think if we are going to assist them in performing their function, we should take out that which is likely to confuse them.

MR. McNAMARA: It should be noted that this request of the jury's comes at a time when they still have four substantive counts they must decide as to the defendant Juan Ramon Vasquez.

THE COURT: Good point. That does it for me. Interesting point, though. Mr. Lipson is not just whistling in the dark because part of what we tell them, you know, on that agency business is we say if you find that a conspiracy existed and if you find that a particular person was a knowing and willful member of the conspiracy, then that person's acts, and so on, and so forth, are binding on any other person. It raises the question, in the context in which Mr. Lipson raises it, why is that relevant? If they have found a conspiracy existed, if they have found that the particular defendant they are considering is a member. He is not saying they shouldn't have the overt acts charge before them. He is saying let them have that, because that's the third element. He is saying why should they have the agency part. The question is one that warrants some deliberation for the rationale which purports to underlie that being submitted.

I can see this question coming up in other cases, under certain circumstances in the future, and so I invite you and your office to consider the question for the future.

It so happens there are substantive charges pending and are still under deliberation and it could have some relevance to that. We have already charged them and I am not concerned about them being confused about it. So I will send it in.

MR. LIPSON: Your Honor, if I may just note one thing --

THE COURT: We will mark this as a Court's Exhibit.

MR. LIPSON: With respect to Mr. McNamara's last argument that we have substantive counts being considered against Mr. Juan Vasquez being considered by the jury, all of those counts concern events where the evidence makes it quite clear Mr. Vasquez was present, took part in the discussions, and I would submit that the agency instruction is really of no relevance in view of those facts.

If these were counts where the government was seeking to convict Mr. Vasquez because Mr. Reyes, out of Vasquez' presence, sold another quantity of heroin, then there would be a need for that agency instruction. I don't think it's needed in this case.

THE COURT: I think the point is not at all

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specious, given the posture of the case, the present posture of the case.

Vasquez has been convicted on conspiracy.

MR. McNAMARA: But there are pending substantive counts, your Honor.

THE COURT: Yes, but they don't have to have this necessarily, the agency aspects of it.

I am going to send it in but I am interested in the issue that is raised.

(Court's Exhibit 9 is marked.)

THE COURT: Court's Exhibit 9 represents the charge and the other material is being sent in as well now.

Let's proceed with the next case.

(Continued on next page.)

XXX

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(In open court; jury not present - 12:35 p.m.)

THE COURT: You have seen the note,
gentlemen?

MR. MARKS: Yes, your Honor.

(Court Exhibits Nos. 9 and 10 are marked.)

THE COURT: Are there any tapes relating to
count 2 vis-a-vis Juan Ramon Vasquez on January 3, 1977?

The jury requests, in this Court's Exhibit 10,
copies of all testimony and any tapes related to
count 2 of the grand jury charges involving Juan Vasquez
on January 3, 1977.

MR. McNAMARA: The question is what is
meant by "relating to."

There is no tape of the events of January 3.
The Government would contend, however, that the subsequent
tape recordings where the defendant Vasquez is talking
about his involvement in ongoing heroin business, having
people dealing for him, as he says, in one place, are
relevant to and related to the events of January 3
and the other substantive counts.

THE COURT: They occur subsequently?

MR. McNAMARA: Correct, your Honor.

MR. MARKS: If your Honor please, I think
the tapes commenced on February 1. That was the first

1 2 rdmch

2 taping that took place at that particular time.

3 The testimony that was given was given by the
4 various officers regarding January 3, January 5, 6,
5 whatever it was, during the course of the month. There
6 were no tapes at all.

7 I don't think there should be any retroactivity
8 or use of a tape as of February 1 and thereafter, and
9 relating it back to January 3. There is no relevance
10 there.

11 THE COURT: They also request copies of all
12 testimony as well as any tapes related to count 2 of the
13 charges involving Vasquez on January 3, 1977.

14 It's hard to tell what they want.

15 MR. MARKS: It's hard to tell.

16 THE COURT: Do you wish me to bring the jury
17 out and tell them your respective positions about it,
18 and then invite them to submit in writing for whatever
19 they want?

20 MR. McNAMARA: I would think that would be
21 helpful.

22 MR. MARKS: Yes, your Honor.

23 THE COURT: All right.

24 (Jury present)

25 THE COURT: Now, we have two notes from you.

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2 In one note you indicate that you have a
3 verdict. That is Court's Exhibit 9.

4 Mr. Lipson is before another judge and he
5 is going to be tied up for a few minutes. So we will
6 proceed on to the next note, which has been marked
7 Court's Exhibit 10.

8 "The jury requests copies of all testimony
9 and any tapes related to count 2 of the grand jury
10 charges involving Juan Ramon Vasquez on January 3, 1977."

11 We have a bit of a problem. I am told there
12 are no tapes for January 3, 1977.

13 On the one hand, the Government's attorney
14 contends that tapes which occurred later, perhaps as
15 late as or commencing February 1 and thereafter, he believes
16 to be related to these charges.

17 Mr. Marks, on the other hand, contends there
18 should be no retroactivity of taped conversations taking
19 place in February with respect to a January 3 occurrence.

20 You can decide what it is that you think you
21 want.

22 As far as giving you copies of all testimony
23 relating to the matter, we have a similar problem.
24 It is hard to tell exactly what you want, you see, with
25 reference -- strike it.

1
2 It is difficult for us to fathom just what
3 testimony you want. So that if you can be a little more
4 specific in addressing your requests it will be helpful
5 to us.

6 Would you go back and see if you can couch
7 it in more specific terms and then we will see if we cannot
8 give you what it is you are after.

9 But there are no tapes, as such, for January 3
10 itself. Now, there was testimony that related to
11 January 3, but I guess it's woven in and out of various
12 witnesses' testimony. That is not necessarily an
13 insurmountable barrier, but let us hear from you first
14 as to just what it is that you particularly want.

15 Is it some particular witness' testimony or
16 some several witnesses', and relating particularly to
17 this date possibly?

18 Let us know. Send in another note and tell
19 us if you have any further view about the tapes and
20 we will try to respond.

21 (The jury retired to continue deliberations
22 at 12:44 p.m.)

23 THE COURT: Mr. Lipson, we have a verdict
24 as to your client. They also sent in another note and
25 they want something further with reference to Mr. Vasquez.

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2 So, while they are getting together their
3 next note, we will see if we can't wait a little while
4 to hear from them. When we bring them out, we will take
5 the verdict, too.

6 Back to you, Mr. Marks. Somebody got daily
7 copy. Who was it?

8 MR. MARKS: I got the daily copy.

9 THE COURT: Is it clean?

10 MR. MARKS: I didn't bring it with me.

11 THE COURT: You have a copy, Mr. McNamara?

12 MR. McNAMARA: I have a copy, your Honor,
13 and it's clean.

14 THE COURT: My thought was, if they want the
15 testimony of Caracappa and whoever else testified about
16 January 3, you both can go through the transcript.
17 They did ask for copies of it. That's different from
18 reading.

19 MR. MARKS: Your Honor was correct because
20 the testimony is interwoven right through the entire
21 pattern of testimony.

22 THE COURT: That's one possible approach to it.

23 MR. McNAMARA: We could, your Honor, give
24 them the full transcript on the premise that perhaps
25 they know specifically what they are looking for and they

could find it.

THE COURT: We could, but I'm reluctant to do that because it gives them much more than they asked for.

Further, even in giving them the transcript there are problems, because there are lots of matters where there was Court action, counsel action, Court action.

MR. McNAMARA: Your Honor is right.

THE COURT: I don't know how we are going to handle this. What we can do is this:

If you and Mr. Marks can agree on what pertains to the matter they are concerned about, once they have defined it perhaps a little better for us, then it can be read to us by the court reporter, and do I have your agreement that I need not be present for that reading?

MR. McNAMARA: You have the Government's agreement.

MR. MARKS: And my agreement.

THE COURT: If you will remain close for a little while, we will wait no later than 1:00 o'clock. If we have not heard from them by 1:00, we will call them in and take the verdict.

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(Recess)

(12:55 p.m. - in open court; jury not present)

THE COURT: We have a note from the jury:

"The jury desires the testimony of Detective Caracappa related to events which took place January 3, 1977, count 2 of the grand jury charges."

They have narrowed it down. It will be possible for counsel to go through that testimony and bracket the applicable portions and then the court reporter or someone can read that to the jury.

I think it would be better if it's read to them than to send it in, unless there is some agreement by counsel.

Let's bring in the jury and take the verdict.

I will instruct them that when counsel have worked out their request, they will be taken to another courtroom and the material will be read to them.

(Jury present)

(Court Exhibit No. 11 is marked.)

THE COURT: Ladies and gentlemen, we have your further note, which has been marked Court's Exhibit 11. We thank you. That helps us.

We do have a transcript of the testimony and the attorneys are going to get together and select out

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that which you have asked for. Then we will get a court reporter to read it to you.

It will probably be read one flight up in courtroom 2804.

Counsel have waived my appearance there so I can proceed with another trial. If any problems arise, I will be available.

So, as soon as they have that, they will be in touch.

Now, we have Court's 9 indicating that you have reached a verdict with respect to the defendant John Narvaez.

THE CLERK: Ladies and gentlemen of the jury, please answer as your name is called.

(Roll of the jury is called; all present)

BY THE CLERK:

Q Mr. Foreman, please rise.

Has the jury agreed upon a verdict as to the defendant Narvaez?

A Yes, sir.

Q How do you find the defendant?

A We, the twelve jurors, find John Narvaez guilty of the charge of conspiracy.

MR. LIPSON: May we have the jury polled, your

2 Honor?

3 THE CLERK: Listen to your verdict as it
4 now stands recorded:

5 You say you find the defendant Narvaez
6 guilty on count 1, and so say you all.

7 (The jury is polled; all answer in the
8 affirmative.)

9 THE COURT: All right. Would you return
10 to the jury room and resume your deliberations.
11 Lunch will probably be there shortly.

12 (The jury retires to continue deliberations
13 at 1:03 p.m.)

14 THE COURT: Yes, Mr. Lipson.

15 MR. LIPSON: Your Honor, I move to set aside
16 the verdict and for the entry of an order of acquittal,
17 notwithstanding the verdict, and, in the alternative,
18 for a new trial.

19 THE COURT: Application denied.

20 We will put the matter down for sentence
21 on May 31 or June 1, whichever counsel prefer.

22 Any preference?

23 MR. LIPSON: No difference to me.

24 MR. McNAMARA: It doesn't matter to the
25 Government, your Honor.

OPER: At the tone standard time will be 3:31 and 20 seconds.

DET. C.: Huh, this is Det. Stephen Caracappa, N.Y.D.E.T.F. Today's date is February 2, 1977. I'm placing a call to telephone number, area code 212-677-6694 regarding case # CT 76-0259. I'm going to be asking for a female by the name of Gloria, possible last name Montalvo.

JOHN: Hello.

Det. C: Hello, is Gloria there?

JOHN: No.

DET. C: Did she come back yet?

JOHN: No.

DET. C: What time do you expect her?

JOHN: Anytime. But whose's this? Is this the guy from yesterday?

DET. C: Si, Si, Yea.

JOHN: No they ain't going to do it.

DET. C: Yea, well what seems to be the problem there? You know like who's this?

JOHN: Huh? This is her husband.

DET. C: Yea, well listen man, I don't know you. You don't know me.

JOHN: Right.

DET. C: But I tied up a lot of bread in this thing.

3-1930

JOHN: Inaudible

DET. C: A lot a people I had to call people back. I mean, can it be done later or why what am I going to tell my people.

JOHN: I don't think they're going to do it.

DET. C: Why?

JOHN: They can't. It's no good. They turned it back themselves.

DET. C: On, they turned the stuff back? I mean is there any chance - is the stuff going to come out? I mean, you know, what am I going to do with this money? I'm into for a lot of money. We had to take some money off some shys. It's costing me over a grand a day to keep the money out. I don't know whether to hold it or turn it back in. You know I'm in a bad position now.

JOHN: Inaudible -- It's true it's going to be for a while. You may as well try some other place. You know, I don't know I'm waiting for these guys to call, but they haven't called.

DET. C: So in other words, the stuff went bad over there.

JOHN: Yea.

DET. C: Jesus Christ Almighty - because you know we were going to go today.

JOHN: Huh, huh.

DET. C: And I put it off for another day. Now I had to get the guy. I can't even get the guy. I got a guy on his way there now with my bread. You know I'm upset. My people are upset. Don't get me wrong.

3-1930

JOHN: I know.

DET. C: I don't know who the fuck to turn to now. Here I'm I order I order over there -- inaudible -- but am I going to get it? What do I do now? What do I tell my people with all this fucking money out? Well I don't know when do you expect to hear from these people.

DET. C: Is there anything that they can do for me or is it just that bad?

JOHN: Huh, they turned it back completely.

DET. C: The whole thing.

JOHN: Yeah.

DET. C: When is the next one coming in?
Maybe we could - I could keep my man out there.
I can't be sending that money back and forth.

JOHN: Huh, no, I really wouldn't know, I'm pretty sure it will be a while. You know maybe another week or month. Who knows.

DET. C: Another week or month? How much stuff could they have turned back?

JOHN: I really don't know.

DET. C: You don't know?

JOHN: The amount.

DET. C: Alright. I'll have going to have to talk to my man over here and see what, what then everything had to be dried up. It's all coming from the same dam place. Jesus Christ Almighty.

DET. C: Alright, huh, when are they going to call you?

JOHN: Yea.

3-1930

DET. C: You think I can get some more information later on?

JOHN: I don't know. Huh, look give me a call. See what happens.

DET. C: O.k. What's your name?

JOHN: Johnny.

DET. C: Johnny, huh? This is Frankie. Frankie Flaco.

JOHN: Alright.

DET. C: Alright, I'll call you in about an hour, an hour and a half.

JOHN: O.k.

DET. C: Alright, Bye, bye.

JOHN: Bye.

END OF CONVERSATION

MEM:jp
3-1930

C.T. 76-0259
Ex. E. 2/2/77

DET. C: The time is approx. 9 o'clock, today's date is February 2, 1977. I'm placing a call to Gloria Montalvo at telephone number 212-677-6694 regarding the negotiations for the purchase of Ex. 5 in Chicago case number C.T. 76-0259. This is Det. Stephen Caracappa shield # 3240, N.Y.D.E.T.F.

JOHNNY: Hello.

DET. C: Hello, huh, Gloria.

[Noise in background-pause]

JOHNNY: They haven't called back yet these people.

DET. C: Huh, huh, alright, are they going to call back tonight because I got to bring that man back.

JOHNNY: I don't know, I really can't give you no, maybe tomorrow morning or tonight, you know.

DET. C: Alright is Senorita Gloria there?

JOHN: Huh?

DET. C: Is Senorita Gloria there?

JOHNNY: What was that?

DET. C: Is Gloria there?

JOHNNY: Yea.

DET. C: Let me talk to her.

AUREA: Hello.

DET. C: Hello, Frankie.

AUREA: Alright, huh, listen, they haven't called me up yet, but they may call me later on tomorrow morning.

DET. C.: Yea, well I have a problem, I got that man there. I got to bring him back. I going to you know.

AUREA: Well, they may call me tonight later or tomorrow morning.

DET. C: Yea

AUREA: If they call me later tonight or tomorrow morning, we still could leave in the afternoon.

DET. C: Yea, well I tell you what I'll keep him there only until the morning.

AUREA: Uh huh.

DET. C: And I call you in the morning.

AUREA: Alright.

DET. C: If they don't call then, I'm going to have to bring him back and then we going to have to talk about it another time. I can't keep him out there you know. It's ridiculous you know.

AUREA: Yea.

DET. C: O.k.

AUREA: Alright.

DET. C: What time can I call you tomorrow morning.

AUREA: Huh, I got to go out in the morning, so I'll be back around 11 o'clock.

DET. C: Yea, well we got reservations on the 4 o'clock flight.

AUREA: Yea.

DET. C: Alright if they call and you hear from them, call Ramon.

AUREA: Uh huh.

DET C: And he'll get in touch with me and huh, we'll try and work something out.

AUREA: O.k.

DET. C: Bye, bye.

AUREA: Bye.

END OF CONVERSATION

3-1930

DET. C: This is Det. Stephen Caracappa again. I'm now placing a call to area code 212-475-8981 to Ramon Vasquez also regarding the negotiations to the purchase of Ex. 5 C.T. 76-0259. The time now is approx. 5 minute after 9, February 2, 1977.

NYDIA: Hello.

DET. C: Ramon.

NYDIA: Frankie

DET. C: Si (yes)

NYDIA: He said to come over, I'll going to call him. He's in the bar. He'll be here.

DET. C: I can't. I'm with somebody.

NYDIA: Oh.

DET. C: You understand, whose this?

NYDIA: His daughter.

DET. C: Yea, well you know I'm a little tied up now, if there's a problem, can I call him over there?

NYDIA: No you because you were going to come over here.

DET. C: Well I told him I get back to him. Can I call him at the bar? You got the number? Or he doesn't want me to call him over there?

NYDIA: Well I'm going to call him in five minutes and ask him if he ---

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3-1930

DET. C: If I can call him there, tell him I'm with somebody now and, huh, but I want to talk to him.

NYDIA: Alright.

DET. C: And I call you back in 5 minutes.

NYDIA: O.k.

DET. C: O.k. Bye bye.

NYDIA: Bye.

END OF CONVERSATION

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3-1930

CALL TO BAR

Unkn.
Female: Hello.

DET. C: Hello, Ramon?

Unkn.
Female: Who?

DET. C: Ramon.

Unkn.
Female: One minute, o.k.?

DET. C: Uh huh.

[Background noise unkn. female calling Ramon]

Unkn.
Female: Listen.

DET C: Uh huh.

Unkn.
Female: He's not here (in Spanish)

DET. C: He's not there?

Unkn.
Female: No not here, o.k.?

DET. C: O.k.

Unkn.
Female: Bye.

END OF CONVERSATION

CERTIFICATE OF SERVICE

October 11 , 1977

I certify that a copy of this [REDACTED] appendix has been mailed to the United States Attorney for the Southern District of New York.

David P. Hall